

April 11, 2005

Ms. Elizabeth Cotsworth, Director  
Office of Radiation & Indoor Air (6608J)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

SUBJECT: POLICY ISSUE CONCERNING THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S "TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIALS FROM URANIUM MINING, VOLUME 1: MINING AND RECLAMATION BACKGROUND, AS DRAFT FOR REVIEW, SEPTEMBER 2004"

Dear Ms. Cotsworth:

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the above-referenced document that was provided by your staff. The report states (page 1-2, first paragraph) that, based on reviewers' comments on this draft report and future stakeholder meetings, the U.S. Environmental Protection Agency (EPA) may need to provide for protection from this source of radioactive waste material.

The extensive information presented in the report on NRC or NRC Agreement State, licensed *in situ* leach (ISL) sites, could confuse the public. Since the wastes from uranium ISL and heap leach facilities are Atomic Energy Act (AEA) Section 11e.(2) byproduct material, they should not be regulated as technologically enhanced naturally occurring radioactive materials (TENORM). Byproduct material is not subject to Resource Conservation and Recovery Act regulation (see 40 CFR Section 261.4). The NRC regulations that govern these wastes are in compliance with standards promulgated by the EPA under 40 CFR Part 440 (see 10 CFR Part 40, Appendix A, Criterion 8).

In addition, 10 CFR Section 40.4 defines "uranium milling" as any activity that results in the production of 11e.(2) byproduct material. NRC regulates ISL facilities under Part 40 and considers them uranium-processing facilities, not mines. It is our opinion that the report should not refer to ISL facilities as mines.

We recommend that the final document clearly indicate that the wastes at NRC and Agreement State licensed ISL and heap leach facilities are: regulated by the NRC as 11e.(2) byproduct material under the AEA and must be properly disposed of pursuant to NRC requirements addressing this material. Finally, we do not think that this should be a policy issue that EPA is considering. Detailed comments on the draft report were recently provided to your staff via electronic mail. If they have any questions, they can call Robert Nelson, Uranium Processing Section Chief, at 301-415-7298 or by e-mail [ran@nrc.gov](mailto:ran@nrc.gov).

Concerning the broader issue of protecting the public from radioactive waste, we believe it would be useful if our staff and management and yours met on a more regular basis to work on developing a common framework for regulation of low-activity wastes composed of both TENORM and AEA materials. To that end, our staff recently met with the Office of Radiation and Indoor Air staff to discuss EPA's Advance Notice of Proposed Rulemaking on low-activity waste disposal. In addition, I suggest that we meet within the next two months to discuss TENORM and other topics of mutual interest. I believe it would be beneficial if Mike Cook of the Superfund Program participated in the meeting as well, since his organization also deals extensively with radioactive materials and NRC activities. I've asked my staff to contact your staff to schedule such a meeting and develop an agenda. We look forward to continued interactions such as these, and working through the Interagency Steering Committee on Radiation Standards, to promote consistent risk assessment and risk management approaches in setting and implementing radiation protection standards. If you have any comments on this topic, please call James Kennedy at 301-415-6668 or e-mail [jek1@nrc.gov](mailto:jek1@nrc.gov).

In accordance with 10 CFR Section 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>

Sincerely,

**/RA/**

Jack R. Strosnider, Director  
Office of Nuclear Material Safety  
and Safeguards

cc: L. Setlow, EPA  
C. Mattsen, NRC

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Sincerely,  
/RA/

Jack R. Strosnider, Director  
Office of Nuclear Material Safety  
and Safeguards

cc: L. Setlow, EPA  
C. Mattsen, NRC

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