

LIMITED OFFICIAL USE ONLY

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY
AND SAFEGUARDS**



**COMMISSIONER LYON'S
BRIEFING PACKAGE
WESTERN NUCLEAR INCORPORATED
URANIUM MILL SITE
JEFFREY CITY, WYOMING
May 19, 2005**

LIMITED OFFICIAL USE ONLY

CONTENTS

Biographical Data of Meeting attendees 8

Drop-In Visit Agenda

May 19, 2005

Itinerary

Meeting with Commissioner Lyons at 5:00 pm
Contact: Victoria Ibarra 301-415-8420

**VISITORS REPRESENTING
WESTERN NUCLEAR INC.**

- Anthony Thompson, Thompson & Simmons, PLLC (Counsel for WNI)
- Chris Pugsley, Thompson & Simmons, PLLC (Counsel for WNI)

TOPICS OF DISCUSSION

- Delay in License Termination

LIMITED OFFICIAL USE ONLY

TAB 3

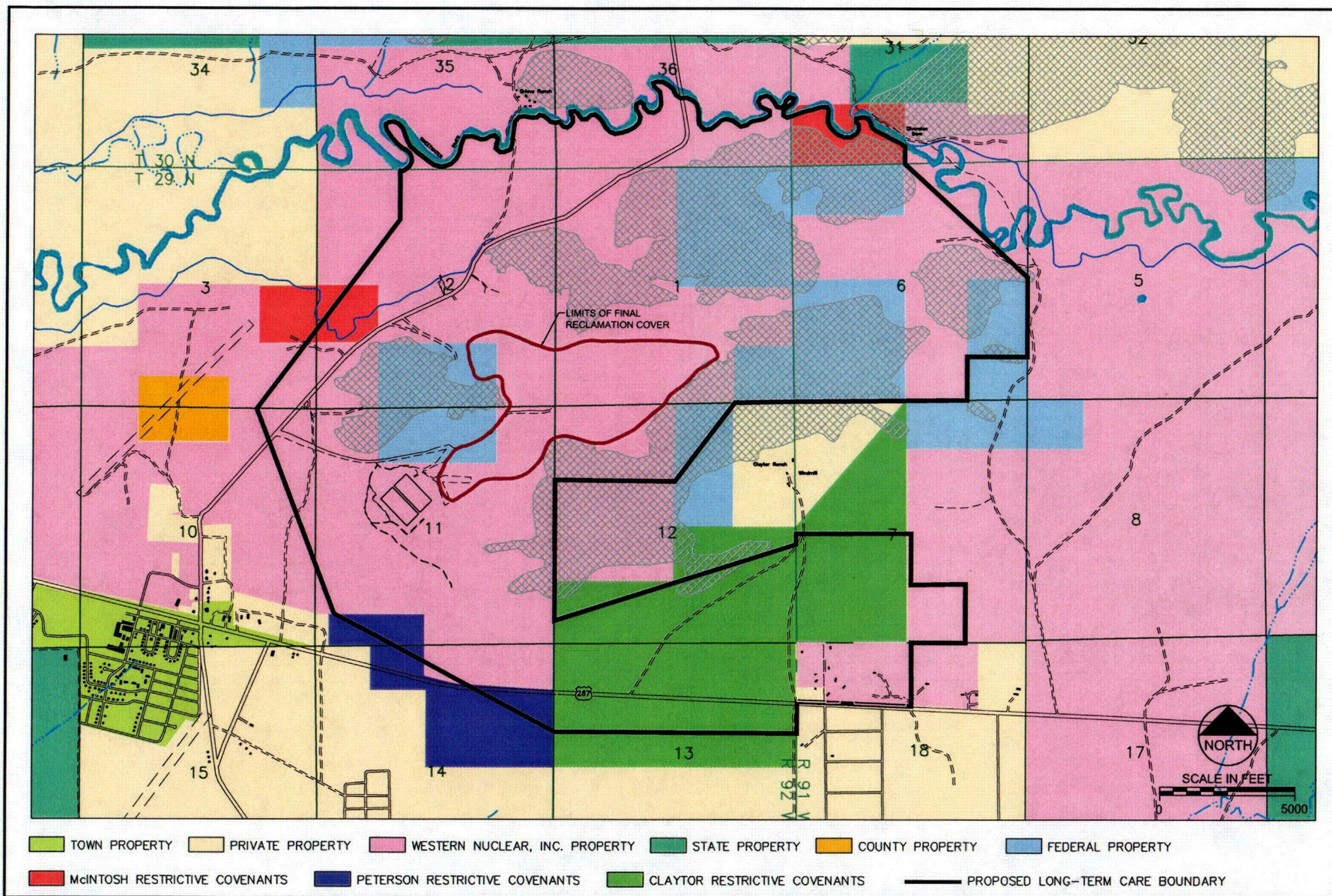
Facility Data

Licensee: Western Nuclear, Inc.
2801 Youngfield Street, Suite 340
Golden, CO 80401
(602) 234-8094

Location: Jeffrey City, Wyoming
License No.: SUA-56
Docket No.: 40-1162
License Status: Reclamation
Location of Meeting: NRC Headquarters, Rockville, MD
Report Coordination: William von Till, NMSS, 301-415-6251

MANAGEMENT DATA

Licensed Activities: The Western Nuclear Inc.(WNI) site is a conventional uranium mill currently under reclamation in accordance with 10 CFR Part 40, Appendix A. Mill operations commenced in 1958 and continued until 1981. Uranium ore processed at the mill was extracted in mines south of the facility. The mill operations consisted of physical and chemical processes including sulfuric acid leaching. Decommissioning of the mill was completed on September 15, 1988. Surface reclamation is complete except for two evaporation ponds and several buildings. One large tailings pile is the main site feature covering 267 acres and weighing 12 million tons. Two evaporation ponds are currently present to support groundwater corrective action. The site has several administrative and maintenance buildings. The site is currently undergoing groundwater remediation with an approved groundwater corrective action plan. The licensee has submitted an application for alternate concentration limits (ACLs). This application is under NRC review.



MFG, Inc.
consulting scientists and engineers

FIGURE 1
WESTERN NUCLEAR, INC. SPLIT ROCK
LAND OWNERSHIP

Date: JANUARY 2005
Project: 003347/2004
File: PROPERTY-04.DWG

COI

LIMITED OFFICIAL USE ONLY

Facility Oversight Program Information

TAB 5

The facility is inspected by NRC Region IV once every two years with technical support from Headquarters. Site visits are conducted as required to support licensing reviews. No oversight issues have been identified.

A. EXPECTED DISCUSSION TOPICS

Request for Alternate Groundwater Standards

WNI is implementing an approved groundwater corrective action plan (CAP) and has submitted a license amendment request for alternate concentration limits (ACLs). Approval of the ACL application would allow termination of the CAP. In addition, approval of the ACL application is the last significant licensing action needed before license termination. However, WNI's analysis indicates that groundwater contaminated with site-derived constituents will migrate to privately owned lands within the next 100 to 200 years. WNI had proposed to use institutional and engineered controls on off site properties to protect public health and safety and the environment from the site-derived constituents in lieu of active corrective action. In a letter to the NRC dated March 26, 2003, the U.S. Department of Energy (DOE), Grand Junction Office, provided comments on WNI's proposal for off site properties in the Red Mule subdivision. Among other comments, the letter stated that DOE did not intend to install nor maintain an alternate water supply, as proposed by WNI, and questioned the concept that private properties could be included in the long-term care boundary.

The Commission determined that WNI should make a good-faith effort to purchase the off site properties, noting, however, that if this goal is not achievable, WNI would have to provide both durable and enforceable institutional controls. As a result, WNI focused its efforts on acquiring all of the properties in the Red Mule subdivision.

The staff received an update from WNI dated February 10, 2005. WNI has acquired all but one of the off site properties in the Red Mule subdivision (Figure 1). In this submittal, WNI provided documentation of its acquisition of properties, institutional controls, and WNI's good-faith but unsuccessful efforts to acquire the one remaining property in the subdivision. This document also contains WNI's positions concerning reasonable assurance and DOE's comments on the alternate water supply.

A status report on this topic was provided to the Commission on March 23, 2005, via SECY-05-0047.

Request to Cease Groundwater Corrective Action

WNI, in a letter dated August 13, 2004, requested to cease groundwater corrective action at the site so that it can expedite the reclamation of two evaporation ponds used as treatment for groundwater recovery (August 13, 2004). WNI did not propose any alternatives to the NRC approved groundwater corrective action plan. By letter dated January 7, 2005, NRC provided a request for additional information (RAI) concerning the groundwater CAP. WNI has not responded to this request. Staff determined that 10 CFR Part 40, Appendix A, Criterion 5D requires that, if the groundwater protection standards established under Criterion 5B(1) are exceeded at a licensed site, a CAP must be put into operation. The objective of the program is to return hazardous constituent concentration levels in groundwater to concentration limits set

LIMITED OFFICIAL USE ONLY

as standards. At the present time, groundwater standards have not been achieved. WNI has not proposed an alternative to replace the present CAP. Without an alternative, the staff is unable to proceed with its review of WNI's proposal to terminate the current CAP. If WNI wishes the staff to review its proposal, WNI would need to provide an alternative that complies with 10 CFR part 40, Appendix A, Criterion 5D or with the alternate proposal provision in the Introduction to Appendix A. This information was conveyed to WNI in the January 7, 2005, letter.

Request to Revise Groundwater Monitoring and Surface Water Monitoring

By letter dated May 24, 2004, WNI submitted a request to amend its license by modifying the compliance monitoring network by reducing the number of monitoring wells, reducing the number of parameters to be analyzed, reducing sampling frequencies, and increasing the number of surface water samples. By letter dated November 10, 2004, the staff forwarded an RAI containing questions and comments regarding the number of wells in the proposed network, sampling frequencies, and mapping information. During the week of December 6, 2004, WNI raised specific issues regarding aspects dealing with the Red Mule area and other technical concerns with NRC's comments and requested clarification of the RAI. WNI and the NRC discussed the issues, in general, via a teleconference on December 16, 2004, and in greater detail via a teleconference on December 20, 2004. As a result, the NRC issued a supplement RAI on January 26, 2005, to which WNI responded on March 2, 2005. Staff is near the completion of this review and will hold a conference call in May 2005 to discuss any remaining issues.

B. OTHER TOPICS OF INTEREST

Labor/Management Issues

None.

License Renewal Activities

None.

Escalated Enforcement

There has been no escalated enforcement within the last year. Also, no escalated enforcement findings are pending.

Open Investigations

None.

Open Allegations

None.

LIMITED OFFICIAL USE ONLY

Congressional Interest

None.

Harassment and Intimidation Issues

None.

2.206 Petitions

None.

Selected News Articles

None.

Significant Reportable Events

None.

State Issues

The State of Wyoming has continued interest in the resolution of groundwater contamination at the site.

Facility Organization

President: Lawrence J. Corte (also, General Counsel with the parent company
Phelps Dodge)

General Manager: Brad DeWaard

On-Site Staff: Four employees on-site performing site remediation tasks.

Biographical Data of Visit Attendees

TAB 8

ANTHONY THOMPSON

Thompson & Simmons, PLLC (Counsel for WNI)

Summary:

Anthony Thompson has been practicing environmental and occupational health and safety law since the mid-1970's. His practice includes legislation, regulatory counseling and litigation involving development of and compliance with environmental and natural resources, risk assessment and management, and occupational health and safety regulatory matters.

As primary outside counsel to the American Mining Congress (AMC), now the National Mining Association (NMA), for radioactive waste issues, he has represented virtually the entire domestic uranium mining and milling industry either as counsel to AMC/NMA or as a counsel to individual licensees since the late 1970s. Thus, for over two decades, his practice has encompassed radiation health and safety issues, including radioactive waste issues, issues related to releases of standards, standards relating to decontamination and decommissioning of radioactive waste disposal sites, and constitutional issues related to federal preemption of Atomic Energy Act materials.

Mr. Thompson also represented AMC/NMA on Clean Air Act Hazardous Air Pollutant regulatory proceedings and litigation, Safe Drinking Water Act, coal and metal/non-metal mine safety and health and various clients including major corporations on health risk issues. He has published and lectured extensively on many of these issues. Because of this expertise, Mr. Thompson was selected by President Bush to serve on the National Risk Assessment Commission, created under section 303 of the 1990 Clean Air Act Amendments.

Mr. Thompson received his B.A. degree in History from Princeton University and his law degree from the University of Virginia School of Law. He is a member of the American Nuclear Society; National Risk Assessment and Management Commission, appointed by President Bush in 1992; American Bar Association – Young Lawyers Section, Washington Liaison Committee, Vice Chairman (1973); Natural Resources Section, Coal Committee, Vice Chairman (1985); District of Columbia Bar Association; Federal Bar Association Agency Representative (FCC) (1973); Federal Communications Bar Association Luncheons Committee Chairman (1975-76); Virginia Bar Association, Phi Alpha Delta Legal Fraternity; The Lawyers Club of Washington; The Alfalfa Club; St. Timothy's School for Girls, Former Member, Board of Trustees; Washington Tennis Foundation, Former Member Board of Trustees; and an associate member of the Society for Mining, Metallurgy and Exploration of AIME.

CHRIS PUGSLEY

Thompson & Simmons, PLLC (Counsel for WNI)

Summary:

Christopher S. Pugsley focuses his legal and political practice on environmental and energy issues as well as government contracting and regulation and constitutional issues. Many of the issues his practice involves include legislation, regulatory and contract counseling and litigation, contract drafting, and risk assessment and management.

On the legal side, Mr. Pugsley spent several months working with the Department of Justice's Commercial Litigation Branch on issues related to the federal Commerce Clause, preemption of state regulation of various issues, and Fifth Amendment Takings claims. Mr. Pugsley's litigation experience also includes working with private attorneys on the ongoing litigation between the Department of Energy and private electrical utilities regarding the proposed construction of Yucca Mountain and compensation from the Nuclear Waste Fund.

Mr. Pugsley's environmental practice consists of statutory and regulatory analyses of Nuclear Regulatory Commission and Environmental Protection Agency issues related to the possession and use of nuclear materials and the decommissioning of nuclear facilities. Mr. Pugsley currently serves as associate lead counsel for CFC Logistics, Inc., a commercial food processing and irradiation company, in licensing and litigation matters before the Nuclear Regulatory Commission. In addition, Mr. Pugsley also works with the Food Irradiation Processing Alliance and the Gamma Irradiation Processing Alliance on health and safety and federal regulations issues. Mr. Pugsley also has worked with the National Mining Association and other commercial uranium mining/processing companies on issues of concurrent federal/state regulation of nuclear facilities and federal preemption of Atomic Energy Act regulatory authority, as well as issues related to Nuclear Regulatory Commission regulations.

With respect to political issues, Mr. Pugsley currently works with several commercial companies in assisting them to acquire government contracts with various executive agencies including the Departments of Energy, Homeland Security, and Defense. Mr. Pugsley also serves as a consultant for the Cherokee Nation on environmental matters and for Securit-e-Doc, Inc., an information technology company based in West Palm Beach, Florida.

Mr. Pugsley received his Bachelor of Arts degree in Politics from Washington and Lee University in 1998 and his Juris Doctor degree from The George Washington University School of Law in 2001. He is currently licensed to practice in the State of Maryland and is the author of the recently published article entitled *The Game of "Who Can You Trust?"—Equitable Estoppel Against the Federal Government*, 31 Pub. Cont. L.J. 101. Mr. Pugsley is also the co-author of several speeches and presentations including entitled *Trusts and Long-Term Stewardship at Decommissioned Nuclear Facilities* given at the Department of Energy's Long-Term

LIMITED OFFICIAL USE ONLY

Stewardship Workshop in July of 2001. In addition, Mr. Pugsley is the co-author of the book *OSHA Environmental Compliance Handbook: Third Edition* to be published in the summer of 2004 and the *Fourth Edition* to be published in the summer of 2005. Mr. Pugsley also acts as a honorary judge for the American Bar Association's Law Student Division's National Appellate Advocacy Competition.