



**Department of Energy
Office of Legacy Management**

Docket: 40-1162

JUL 13 2005

Gary Janosko, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Efforts of Western Nuclear Inc. to Acquire Institutional Controls within Long-Term Surveillance Boundary

Dear Mr. Janosko:

This is in reply to your May 9, 2005, letter to me and our subsequent discussions at the National Mining Association meeting in Denver on May 23. The U.S. Department of Energy's (DOE's) policy for Title II sites is that they should transition to DOE with all land or institutional controls needed to secure the disposal cell and site contaminants for the duration of time that these contaminants remain a hazard, which is usually in perpetuity.

At the Western Nuclear Inc. (WNI) site in Split Rock, Wyoming, the company has worked closely with the NRC to model the spread of ground water contaminants and has predicted the localized spread of uranium eastward until it reaches equilibrium with background concentrations. DOE would like to better understand how the model accounted for the reported variability in background uranium contamination, but, based on the information presented, we are prepared to address the issues raised in your letter.

Regarding WNI's efforts to acquire properties predicted to be within the path of uranium-contaminated ground water, DOE agrees with NRC that, based on the information presented, WNI has made a reasonable effort to acquire the one remaining property. DOE recommends that either the NRC remove this property from the long-term surveillance (LTS) boundary based upon a reassessment of the likelihood of the disposal cell contaminants reaching and impacting the ground water at this property, or retain the property within the boundary and agree that the funds transferred to the federal government should be adjusted to include the amount of the final offer made to the property owner. If NRC cannot make a determination that the LTS boundary be reduced by the area of this property, DOE would request that WNI make one final attempt to purchase the property or a real estate right which affects the ground water use restriction prior to providing these additional funds to the U.S. Treasury at the time of site transfer. In the event the property acquisition cannot be completed prior to transfer of the site to DOE, and the federal government must acquire the property in the future in order to prevent the residential use of ground water contaminated due to the disposal cell, we would have offset the cost to the taxpayers for that future acquisition.

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DOE thus concludes that WNI has offered at least fair market value for the final property, and we are comfortable that the federal government would not have to pay any more than the amount of WNI's final offer. Alternatively, we would also be satisfied if NRC redrew the LTS boundary excluding the subject property based on our understanding of the ground water fate and transport. DOE does not see the value in having WNI provide an alternate ground water supply to the boundary of the subject property as a means to offset the inability to acquire the property or acquire a use restriction. Such an alternate supply would quite likely not yield water of a quality that meets the drinking water standard for uranium due to the high background concentrations in the area, and maintenance costs could easily exceed installation costs during the hundreds of years predicted for the disposal cell contaminants to migrate to the subject property.

Additionally, some of the wells that may be included in the LTS monitoring program are currently outside the proposed site boundary. DOE would like to see the boundary redrawn to include all wells in the long-term monitoring plan, which we understand WNI is developing in coordination with NRC. Ownership or institutional controls should convey to DOE to provide access for monitoring, maintenance, and well replacement and to enforce the appropriate use restrictions within the LTS boundary. All other wells should be properly decommissioned and plugged prior to transfer to DOE.

We believe these positions are consistent with DOE's efforts to assure that Title II sites transfer to DOE with sufficient land or institutional controls to provide protection of human health and the environment and to control exposure to site contaminants. In this case, contaminated ground water may have an impact beyond the proposed licensed area boundary (if the property in question is carved out of the site boundary), but the selection of the background uranium concentration appears to have been so conservative that this potential impact may not even be measurable at the location of the subject property that WNI has not been able to acquire. DOE believes that monitoring will be in place upgradient of the subject property to provide significant advance warning of uranium-contaminated ground water migration, such that sufficient time will be available to acquire the necessary institutional control in the future.

If you have questions regarding the DOE position or would like to discuss it with us, please contact Tom Pauling at 970-248-6048.

Sincerely,

for 
Raymond M. Plieness, Acting Director
Office of Land and Site Management

cc:

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