

January 16, 2007

Mr. Michael Cepak
Minerals and Mining Program
South Dakota Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Re: Preliminary Draft In Situ Leach Mining Regulations

Dear Mr. Cepak:

I would like to thank you and your colleagues for participating in the January 11, 2007, telephone discussion with the U.S. Nuclear Regulatory Commission (NRC) staff about the above-captioned regulations. The purpose of this letter is to provide preliminary comments on these draft regulations and facilitate further discussion between our agencies.

The NRC recognizes that these draft in situ leach (ISL) mining regulations respond to the 2006 South Dakota Senate Bill 62, whose purpose is "to authorize the Board of Minerals and Environment to adopt rules for the construction, operation, monitoring, and closure of uranium and other in situ leach mines." Upon review of these regulations, it appears that South Dakota intends to assert regulatory authority over many activities associated with ISL uranium mining. This authority appears to cover, among other things, uranium byproduct material, radiation standards for soil cleanup, and decommissioning radiation standards. Many of the draft regulations duplicate NRC regulatory requirements set forth in 10 C.F.R. Part 40, Appendix A. In the January 11 discussions, you confirmed that some of the South Dakota provisions were based on these NRC requirements.

The purpose and intent of promulgating regulations that duplicate NRC requirements is not clear to the NRC staff. We are interested in your agency's views on South Dakota's authority to promulgate duplicate regulations because doing so raises the question whether the State is attempting to take regulatory action in areas that are reserved exclusively to the NRC.

The NRC's 1997 *Statement of Principles and Policy for the Agreement State Program: Policy Statement on Adequacy for Compatibility of Agreement State Programs* (Enclosure 1) generally addresses areas of exclusive NRC regulatory authority.¹ The Policy Statement provides that a state may inform its licensees of NRC requirements so long as the state adopts them in its own administrative procedures "solely for the purposes of notification, and does not exercise any regulatory authority pursuant to them." This is just one possibility, however, and

¹ Although the Policy Statement is written in the context of an Agreement State, which South Dakota is not, we believe that the section described in this letter also applies to non-Agreement States.

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we look forward to hearing your views on this matter.

Again, thank you for your time. Open lines of communication with the State are crucial for effectively and efficiently dealing with potential health and safety issues and questions of jurisdiction, and we appreciate the opportunity to discuss our concerns with you. Please contact me (301-415-1644) or Darani Reddick (301-415-3841) should you have any questions.

Sincerely,

/RA/

Francis X. Cameron
Assistant General Counsel for
Rulemaking and Fuel Cycle

Encl: As stated

M. Cepak

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