NEW MEXICO
ENVIRONMENTAL LAW CENTER

February 26, 2007

**BY ELECTRONIC MAIL and U.S. MAIL, FIRST CLASS**

United States Court of Appeals for the 10th Circuit
Office of the Clerk
1823 Stout Street
Denver, Colorado 80257

Re: Errata Notice, ENDAUM and SRIC, et. al. v. U.S. Nuclear Regulatory Commission, Case File No. 07-9505

Dear Sir or Madam:

It has come to my attention that pages 62 and 63 of attachment 14 to Petitioners' Petition for Review in the above matter are missing. Please find enclosed for filing the aforementioned pages.

If you have any questions, please feel free to contact me at (505) 989-9022. Thank you for your attention to this matter.

Sincerely,

Eric D. Jantz
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
Telephone: (505) 989-9022 x 23
Facsimile: (505) 989-3769

Attorneys for Petitioners ENDAUM and SRIC

Enclosures

cc. Charles Mullins, U.S. Nuclear Regulatory Commission
The Honorable Alberto Gonzales, U.S. Attorney General

with: (1) the pertinent portions of the National Environmental Policy Act and its implementing regulations; and (2) the relevant administrative proceedings in this case. These topics are addressed below.

### A. The National Environmental Policy Act and Its Implementing Regulations

The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370f, has two principal objectives. First, it ensures that an agency considers every significant aspect of the environmental impact of a proposed action (*Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983)). Second, it ensures that the agency informs the public that it has, in fact, considered environmental concerns in its decisionmaking process (*ibid.*).

To effect these cardinal goals, NEPA requires a federal agency, before taking any action "significantly affecting the quality of the human environment," to prepare a "detailed statement" (i.e., an environmental impact statement) — which must be made available to the public — discussing, *inter alia*, the environmental impact of the proposed action and possible alternatives (42 U.S.C. § 4332(2)(C) (2000)). An agency's preparation and public dissemination of the environmental impact statement serves to fulfill NEPA's twin aims, because the "'detailed statement' it requires is the outward sign that environmental values and consequences have been considered during the planning stage of agency actions" (*Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979)).

The NRC's regulations implementing NEPA are contained in 10 C.F.R. Part 51. As relevant here, these regulations provide detailed instructions governing the preparation of a draft environmental impact statement (DEIS), which must include: (1) "a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects" (10 C.F.R. § 51.71(d)); and (2) "a preliminary recommendation by the NRC Staff respecting the proposed action" (*id.* § 51.71(e)). Upon completing the DEIS, the NRC Staff releases it to the public and requests comments (*id.* §§ 51.73, 51.74). The NRC Staff then prepares a final environmental impact statement (FEIS), which includes responses to any comments on the DEIS (*id.* §§ 51.90, 51.91).[3]

[3] The Council on Environmental Quality (CEQ) also has promulgated regulations addressing NEPA compliance (42 U.S.C. § 4342 (2000); 40 C.F.R. Parts 1500-1518). Although the Commission is "not bound by CEQ regulations that it has not expressly adopted, [it] gives those regulations 'substantial deference'" (*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, *(Continued)*



It bears emphasizing that NEPA does "not require agencies to elevate environmental concerns over other appropriate considerations. Rather, it require[s] only that the agency take a 'hard look' at the environmental consequences before taking a major action" (*Baltimore Gas & Elec. Co.*, 462 U.S. at 97 (citations omitted)). "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs" (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). Thus, "[NEPA] does not mandate particular results, but simply prescribes the necessary process" (*ibid.*).

### B. The Relevant Administrative Proceedings in This Case

In January 1998, the Staff granted HRI's application for a license to perform ISL uranium mining at four proximately clustered sites in McKinley County, New Mexico — Sections 8 and 17 in Church Rock, and Crownpoint and Unit 1 in Crownpoint — that HRI plans to develop and mine in phases over a 20-year period, beginning with Section 8.[4] The Intervenors asserted that HRI's license was not valid for operations at any of the four sites. Given HRI's plan to begin its mining operations at Section 8, the then-Presiding Officer, in September 1998, granted HRI's request to bifurcate this litigation, focusing initially in Phase 1 on

56 NRC 340, 348 n.22 (2002) (citation omitted)). *Cf. Baltimore Gas & Elec. Co.*, 462 U.S. at 99 n.12 (declining to decide whether CEQ regulations have binding effect on "an independent agency such as the [NRC]").

[4] HRI's ISL uranium mining process, briefly explained, will involve two principal steps. First, HRI will inject a leach solution called lixiviant — which is a mixture of groundwater charged with oxygen and bicarbonate — through injection wells located in a targeted zone containing uranium oxide. The uranium oxide, which occurs as small mineral grains within a sandstone host rock, dissolves when it comes into contact with the lixiviant. HRI will also operate production wells located within a pattern of injection wells. The production wells create a reduced pressure in the mined region by withdrawing slightly more water from the ground than is injected, thus controlling the horizontal spread of the pregnant lixiviant (i.e., the lixiviant that now contains dissolved uranium oxide), and causing it to flow toward the production wells where it is pumped to the surface. *See* NUREG-1508, "Final Environmental Impact Statement To Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico" (Feb. 1997), at 2-2 to 2-5 [hereinafter FEIS].

The second step of the ISL mining process occurs after the pregnant lixiviant is pumped to the surface. HRI will pipe the pregnant lixiviant through columns of ion exchange resin, during which the uranium oxide will attach to the resin. Upon leaving the ion exchanger, the now-barren lixiviant will be recharged as necessary with oxygen and bicarbonate, and it will then be reinjected into the ore zone to repeat the leaching cycle. When the ion exchange capacity of a column of resin is depleted, that column is taken offline and the uranium oxide is chemically stripped from the resin. The resulting uranium oxide slurry is filtered and dried to produce the finished product — uranium oxide concentrate, or yellowcake — which is packaged and stored for final shipment. *See* FEIS at 2-5 to 2-12.