(27)

From: Sarah Fields [sarahmfields@earthlink.net]
Sent: Friday, May 09, 2008 12:55 AM
To: Secy
Subject: RIN 3150-AH45
Attachments: comments_73fr3811_080122.pdf; ATT00001

Attached please find comments on the Decommissioning Planning Proposed Rule, noticed in the *Federal Register* January 22, 2008 (73 Fed. Reg. 3811-3846).

Sarah M. Fields
Uranium Watch
435-259-4734

Template = SECY-067

SECY-02

Uranium Watch

P. O. Box 344
Moab, Utah 84532
435-259-4734

May 8, 2008

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ATTN: Rulemakings and Adjudications Staff
Via electronic mail: SECY@nrc.gov

RE: RIN 3150-AH45 | Decommissioning Planning | Proposed Rulemaking

Below please find comments on the Decommissioning Planning Proposed Rule, noticed in the *Federal Register* January 22, 2008 (73 Fed. Reg. 3811-3846).

All of my comments are influenced by what I know of the bankruptcy of the Atlas Minerals Corporation, owner/operator of the Atlas Uranium Mill in Moab, Utah (Docket No. 40-3453). Unfortunately, due to the fact that the Nuclear Regulatory Commission (NRC) removed the Atlas licensing documents from ADAMS, documents related to the final demise of the licensee, transfer of the license to a trustee, experience with the trustee as the licensee, and eventual transfer of the site to the U.S. Department of Energy (DOE) are not readily available to the NRC staff and members of the public.

In 2000, Congress changed the Moab Mill from a Uranium Mill Tailings Radiation Control Act (UMTRCA) Title II site to a UMTRCA Title I site, and the DOE took over responsibility for reclamation of the site in 2001. Therefore, it appears to have fallen outside of NRC's consideration as prime example of a legacy site and of numerous failures by the NRC in the licensing and decommissioning planning process. The NRC is now attempting to address some of these problems and failures in the proposed Decommissioning Planning rule, apparently, without giving the history of Atlas Mill a hard look.

I. GENERAL COMMENTS

A. The proposed rule should have included a more detailed analysis of past licensing and decommissioning planning failures that resulted in a lack of decommissioning funds and radioactive contamination of soil and water that had not been adequately addressed in the decommissioning planning process. Only when these failures and the reasons for those

failures are specifically identified and analyzed can the NRC go forward with an adequate rule.

B. The NRC has not provided the public with information on NRC and Agreement State sites that have yet to be properly decommissioned and reclaimed. One site in particular comes to mind: the Sweeney Mill Site, near Boulder, Colorado.

C. Discussion at Proposed Rule (page 3818), at G., "Why Might Some Materials Licensees Not Have Funds To Decommission Their Facility?"

This discussion fails to list, as a reason for insufficient reclamation funds, the failure of the licensee, with NRC concurrence, to establish a realistic surety. This is also tied into the failure of the licensee, with NRC concurrence, to develop a realistic reclamation plan.

D. The proposed rule fails to address a very significant question: What happens when an independent third party assumes the responsibility for the control, maintenance, and decommissioning of a site and how that would impact the establishment of financial assurances and the decommissioning plan process? The NRC has not addressed, but should have, the process whereby a third-party entity is engaged as a trustee, the trustee becomes a licensee, the criteria for engaging third-party trustees, limitations on third-party spending for administrative and legal costs, regulation of the trustee by NRC staff, NRC response to third-party threats, removal of a third-party as a trustee, and similar issues related to the assumption of licensing responsibilities by a third-party.

Some of the circumstances related to the Atlas Uranium Mill trusteeship:

- Very limited funds, so there was no way that the trustee could have accomplished the NRC approved reclamation plan (which did not include an approved groundwater remediation plan) given the amount of the trust fund. However, this was never acknowledged by the trustee and the NRC staff.
- Pricewaterhouse Coopers was not an entity that, itself, had experience carrying out reclamation.
- Pricewaterhouse Coopers charged very high administrative fees, which came out of the trust fund.
- Because there was never an approved groundwater correction plan as part of the decommissioning plan, trust monies had to be spent by the trustee to develop such a plan for NRC approval.
- Pricewaterhouse Coopers was required to submit reports to the NRC every six months. However, for some inexplicable reason, the last two six-month reports were never submitted.
- Pricewaterhouse Coopers did extensive work to clean up balance of site contamination and place it on the tailing impoundment, to create a system of wicks to dewater the tailings, and to reconfigure the top of the tailings impoundment. Yet, they failed to submit final as-built drawings of the work done.
- Pricewaterhouse Coopers set unrealistic, technically unfeasible site-reclamation

milestones that were not supportable. Yet, the NRC staff accepted those milestones.

- Pricewaterhouse Coopers paid to seed the sides of the tailings impoundment as a dust-control measure. Even though the contractor who did the work stated that continued watering would be necessary, no such watering program was carried. Since Moab is a desert, with limited precipitation, the seeds did not receive enough water to take hold. So, several thousand dollars were completely wasted.
- In general, there appeared to be reluctance on the part of the NRC staff (and the State of Utah) to properly oversee the work done by the trustee/licensee and to assure that the limited trust funds were properly allocated to further the purposes of site reclamation.
- The NRC did not keep the public adequately informed about the realities of the situation. There was no discussion of what was going to happen to the site when the meager trust fund ran out. Only Congressional action saved the day for the NRC.

In a proposed rule that is supposed to bolster financial assurance requirements, the NRC should have addressed the reality of a trustee as a licensee when the surety must supply the funds for a trustee to take over licensing responsibilities.

There will not be sufficient financial assurance in the form of a trust fund to enable an independent third party to assume and carry out responsibilities for control, maintenance, and decommissioning of the site, if the NRC does not address what happens when a third party actually assumes that responsibility.

If a trustee is permitted to spend funds that should be spent on reclamation on high-priced administrative and legal fees and permitted to waste funds on ill-advised work, then no amount of financial assurance will be adequate.

E. Some representatives of the uranium recovery industry are claiming that new financial assurance and monitoring requirements are not necessary for Part 40 uranium recovery facilities, because the existing regulations are sufficient. Nothing could be further from the truth. There is ample evidence that the existing Part 40 regulation have not been sufficient to establish sufficient reclamation funding and to prevent unaddressed radioactive contamination of the ground and surface water.

II. COMMENTS ON SECTIONS OF THE RULES

1. *PART 40--DOMESTIC LICENSING OF SOURCE MATERIAL*
Sec. 40.36 Financial assurance and recordkeeping for decommissioning.

COMMENT:

A. Section 40.36(5)(d)(1)(i) contains a list of costs that must be included in the decommissioning cost estimate. Missing from that list is a requirement that the cost estimate include an estimate of legal costs and administrative costs of the third party

trustee who would be responsible to carry out the responsibilities for the site as the licensee.

As long as high-priced, third party trustees are appointed by the NRC and there are ongoing legal and decommissioning issues, any surety will, in the end, be insufficient to carry out the decommissioning of the site in a safe and environmentally sound manner.

B. The surety should also include provisions for the payment of licensing fees. The public should not have to pay the costs of inspections, document reviews, license amendments, and other NRC regulatory activities when a license is taken over by an independent third party. Nor, should a licensee be exempted for annual fees that ordinarily would have been assessed. A consideration of recovery of these fees should be part of any surety.

2. *Appendix A to Part 40--Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content*
* * * * *
II. Financial Criteria

COMMENTS:

A. The rule should make clear that the costs related to the cleanup of ground and surface water at a Part 40 facility should be included in the decommissioning funds. The contamination of groundwater at Part 40 uranium recovery facilities is surely the most underestimated and neglected aspect of the decommissioning plan and the related financial assurance.

B. Additionally, the NRC should make clear that the approval of decommissioning and groundwater cleanup plans is to be based on plans that, in fact, results in the cleanup of the contamination, rather than on cleanup and decommissioning plans that will require the least expense.

C. The surety should also include provisions for the payment of licensing fees. The public should not have to pay the costs of inspections, document reviews, license amendments, and other NRC regulatory activities when a license is taken over by an independent third party. Nor, should a licensee be exempted for annual fees that ordinarily would have been assessed. A consideration of recovery of these fees should be part of any surety.

D. Criterion 9 should include a requirement that the cost estimate include an estimate of legal costs and administrative costs of the third party trustee who would be responsible to carry out the responsibilities for the site as the licensee. A "contingency" fee is not sufficient.

In the case of the Atlas Uranium Mill, over 50% of the funds made available to the trustee (Pricewaterhouse Coopers) were spent on administrative and legal costs. So, less than 50% of the funds available from the surety, established to carry out decommissioning of the site, were actually spent on decommissioning activities.

As long as high-priced, third party trustees are appointed by the NRC and there are ongoing legal and decommissioning issues, any surety will, in the end, be insufficient to accomplish decommissioning within the available funding limitations.

E. Another cost that may be part of decommissioning is the cost of disposing of unprocessed material at a uranium mill, including so-called "alternate feed material." Some of the alternate feed is low-level radioactive and Resource Conservation and Recovery Act (RCRA) hazardous waste (that is, mixed waste) that, under ordinary circumstances, could not be disposed of in an 11e.(2) byproduct material impoundment. It can only go into such an impoundment after it has been processed for its "source material" content, that is, its uranium content. If the material is not processed, it is reasonable to assume that is must be disposed of at a mixed-waste facility and not at a Part 40 uranium recovery facility. The costs for transportation and disposal of alternate feed that is a mixed radioactive and hazardous waste at a suitably licensed mixed-waste facility must be part of the decommissioning cost estimate until that material has been processed at the mill. It cannot be assumed that the material, if it is not processed, can be disposed of as 11e.(2) byproduct material in an existing impoundment.

F. The uranium mill surety must be sufficient to cover the costs of developing a Long Term Surveillance Plan that is acceptable to the Department of Energy.

G. The NRC must establish rules that apply when a surety is collected and made available to a third party in order to carry out site maintenance and reclamation activities. See the discussion at I.D., above.

H. The NRC must also include rules related to the establishment of reclamation milestones. The NRC has, in the past, allowed at least one licensee (Atlas) to defer the cleanup of off-site tailings until the final reclamation, even though it was perfectly feasible for the off-site contamination to be cleaned up and placed on the tailings impoundment. The result was that the costs from extensive off-site tailings cleanup was not born by the licensee.

The NRC must consider the approval and implementation of these milestones as part of its efforts to assure that all decommissioning will be adequately funded.

I. NRC should also assure that the cleanup of any on-site contamination and ground and surface water remediation is carried out during the life of the facility, rather than waiting to implement these plans as part of the final decommissioning plan.

J. Uranium mills must be required to monitor the groundwater in areas other than those impacted by the tailings impoundments. Groundwater that can potentially be impacted

by the uranium mill itself, ore pads, and other on-site radioactive and chemical materials must also be monitored. At the Atlas Mill, there was a large plume of contamination from the mill and ore pads flowing into the Colorado River north of the tailings impoundment that had never been monitored and was only discovered by a study by the Oak Ridge National Laboratory (ORNL), and not by the licensee.

K. The NRC should also look at the circumstances surrounding the bankruptcy of Atlas Minerals, the licensing practices that permitted Atlas to develop and implement a groundwater corrective plan that was totally inadequate to address groundwater contamination (which, according to ORNL, may have made the situation worse), the failure to discover a plume of groundwater contamination due to the lack of appropriate monitoring well locations, and the failure to require timely cleanup of both on-site and off-site soil contamination. Costs to the public for the cleanup of that site were primarily the result of NRC actions and failures to act. These can only be corrected when there is a comprehensive evaluation of what when wrong.

L. At the White Mesa Uranium Mill near Blanding, Utah, over the years there was little consistency in the groundwater monitoring and sampling program. There were differences in the constituents sampled, timing and frequency of the sampling, sampling techniques, methods of analysis, and similar activities. This has lead to a situation where it was hard to compare and correlate the samples over time. This, plus the failure to properly characterize the background constituents in the groundwater, has lead to questions regarding the source of various increases in groundwater contaminants.

The NRC must require consistency in the methods of site characterization over time for air, water, and soils. Without consistency, it is much more difficult to identify radiological and chemical contamination that must be addressed as part of the site remediation work during the life of the site and during decommissioning.

Thank you for this opportunity to comment.

Sincerely,

Sarah M. Fields
Program Director
Uranium Watch

and

Glen Canyon Group
Sierra Club
P.O. Box 622
Moab, Utah 84532

Received: from mail2.nrc.gov (148.184.176.43) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.0.751.0; Fri, 9 May 2008
00:54:52 -0400
X-Ironport-ID: mail2
X-SBRS: 5.4
X-MID: 15788457
X-IronPort-Anti-Spam-Filtered: true
X-IronPort-Anti-Spam-Result:
AmYCAAN2I0hChbfummdsb2JhbACCPC+PGwEBAQEBCAUIBxEEGph1
X-IronPort-AV: E=Sophos;i="4.27,458,1204520400";
d="pdf'?scan'208,217";a="15788457"
Received: from mx11.roch.ny.frontiernet.net ([66.133.183.238]) by
mail2.nrc.gov with ESMTP; 09 May 2008 00:54:50 -0400
Received: from relay04.roch.ny.frontiernet.net ([66.133.182.167]) by
mx11.roch.ny.frontiernet.net with ESMTP; 09 May 2008 04:54:48 +0000
X-Virus-Scanned: by amavisd-new-2.5.3 at filter05.roch.ny.frontiernet.net
Received: from [192.168.254.1] (74-47-67-85.br1.moab.ut.frontiernet.net
[74.47.67.85]) by relay04.roch.ny.frontiernet.net (Postfix) with ESMTP id
6BC55CBE87 for <SECY@nrc.gov>; Fri, 9 May 2008 04:54:42 +0000 (UTC)
MIME-Version: 1.0 (Apple Message framework v752.3)
To: Secretary NRC <SECY@nrc.gov>
Message-ID: <2612174D-82FE-428F-9DCE-2F007788538A@earthlink.net>
Content-Type: multipart/alternative; boundary="Apple-Mail-2-73447264"
From: Sarah Fields <sarahmfields@earthlink.net>
Subject: RIN 3150-AH45
Date: Thu, 8 May 2008 22:54:41 -0600
X-Mailer: Apple Mail (2.752.3)
Return-Path: sarahmfields@earthlink.net