
From: Jonathan Block [jblock@nmelc.org]
Sent: Friday, May 15, 2009 4:28 PM
To: Stephen Cohen
Subject: NMELC's Comments on Behalf of SRIC
Attachments: NMELC Comments on behalf of SRIC 20090515.pdf; jblock.vcf

Hello Stephen:
Attached are our final, revised comments on the Draft RIS.
Thank you for your patience and cooperation.

Have a good weekend!

Jon

--

Jonathan Block, Staff Attorney

New Mexico Environmental Law Center

1405 Luisa Street, Ste. 5

Santa Fe, NM 87505

(505) 989-9022, Ext. 22

Received: from mail1.nrc.gov (148.184.176.41) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.1.358.0; Fri, 15 May 2009
16:28:17 -0400

X-Ironport-ID: mail1

X-SBRS: 4.8

X-MID: 2238890

X-IronPort-AV: E=Sophos;i="4.41,201,1241409600";
d="pdf?vcf?scan'208";a="2238890"

Received: from elasmtp-kukur.atl.sa.earthlink.net ([209.86.89.65]) by
mail1.nrc.gov with ESMTP; 15 May 2009 16:28:16 -0400

Received: from [68.166.114.76] (helo=jonathan-blocks-macbook.local) by
elasmtp-kukur.atl.sa.earthlink.net with esmtpa (Exim 4.67) (envelope-from
<jblock@nmelc.org>)id 1M540I-0005v5-J2 for Stephen.Cohen@NRC.gov; Fri, 15
May 2009 16:28:13 -0400

Message-ID: <4A0DD056.1030501@nmelc.org>

Date: Fri, 15 May 2009 14:28:06 -0600

From: Jonathan Block <jblock@nmelc.org>

User-Agent: Thunderbird 2.0.0.21 (Macintosh/20090302)

MIME-Version: 1.0

To: Stephen.Cohen@NRC.gov

Subject: NMELC's Comments on Behalf of SRIC

Content-Type: multipart/mixed;

boundary="-----030905060402070203090502"

X-ELNK-Trace:

b25e23c4d4af3f5674bf435c0eb9d478b6068cd38e010e3d99c2a06704047502c3ce2583f809529
a350badd9bab72f9c350badd9bab72f9c350badd9bab72f9c

X-Originating-IP: 68.166.114.76

Return-Path: jblock@nmelc.org



May 11, 2009

Chief, Uranium Recovery Licensing Branch
Division of Waste management and Environmental Protection
Office of Federal and State Materials and Environmental Management Programs
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001
By email to Stephen.Cohen@NRC.gov

RE: Draft Regulatory Issue Summary 2009-XX, "Pre-Licensing Construction Activities at Proposed Uranium Recovery Facilities"; Proposed Generic Communication, 74 Fed. Reg. 13483-13485 (March 27, 2009)

Dear Sir/Madam,

The New Mexico Environmental Law Center files these comments on behalf of Southwest Research and Information Center (SRIC) opposing any substantive or interpretational changes to the provision of 10 CFR 40.32(e) that bars construction of source material recovery and byproduct material management facilities prior to facility licensing. We incorporate herein by reference, to the extent not inconsistent with our comments that follow, the comments of the Natural Resources Defense Council (NRDC) and the Powder River Basin Resource Council (PRBRC), and the Navajo Nation Department of Justice.

NRC'S URANIUM MILL LICENSING RULE-MAKING HISTORY and §40.32(e)

Having participated in the NRC's 1979-1980 rulemaking for the first licensing and operational requirements for uranium mills and mill tailings facilities¹, SRIC staff is certain that the pre-licensing construction ban was understood to be applicable to *all forms of uranium recovery*, including in situ leach (ISL) (or, alternatively, in

¹ See 44 Fed. Reg. 50012 (August 24, 1979), and 45 Fed. Reg. 65521, discussion under §IV (October 3, 1980).

1405 Luisa Street, Suite 5, Santa Fe, New Mexico 87505
Phone (505) 989-9022 Fax (505) 989-3769 nmelc@nmelc.org

situ recovery [ISR]) facilities. 10 CFR 40.32(e) refers to the application for a license to “use source and byproduct material for uranium milling,” and the definition of uranium milling at 10 CFR 40.4 refers to “production of byproduct material,” which in turn is defined in the NRC rules as “tailings or wastes produced by the extraction or concentration of uranium..., including discrete surface wastes resulting from uranium solution extraction process.” 10 CFR 40.4. We concur with the NRC Staff’s disagreement with the uranium industry’s interpretation that 10 CFR 40.32(e) does not apply to uranium ISL operations until, essentially, lixiviant is injected into wells in the initial wellfield. See, 74 Fed. Reg. 13484-13485. For the reasons set forth herein, and also in the comments filed by NRDC and PRBRC, interpreting 10 CFR 40.32(e) not to apply to ISL operations essentially until mining commences would create irreversible environmental impacts in violation of the Atomic Energy Act (AEA) and National Environmental Policy Act (NEPA).

The Draft Regulatory Issue Summary² at issue is an NRC response to the uranium industry’s initiative discussed with NRC staff on November 18, 2008 (and in numerous private “drop in” sessions with the NRC Chairman and with such NRC staff members as Larry Camper, Director of the Division of Waste Management and Environmental Protection, FSME).³ At the November meeting, the uranium industry representatives presented a White Paper and Power Point slide presentation to the NRC Staff. They revealed at that time their rationale for the NRC to develop a mechanism by which the necessary environmental protections of 10 CFR §40.32 in essence could be waived to allow applicants for licenses for ISL facilities to start construction of facilities attendant to ISL extraction operations prior to being granted a license.⁴ The industry asserted that its suggested “tiering” process for ISL facilities would be similar to that allowed in new reactor licensing under revised 10 CFR Part 52.

² The “RIS” is an agency process that is the precursor to Commission changes in interpretation and application of regulations or the initiation of a formal notice and comment process to change or amend existing rules and regulations.

³ Mr. Camper mentioned the private meetings without a description of the scope or nature of those meetings or the number of meetings at a day-long public meeting at NRC Headquarters. Transcript [Tr-1], “Briefing on Uranium recovery Program Activities, Part I,” at 57:11-14 (Thursday, December 11, 2008); ADAMS Identifier ML083520546. For many years, we have been concerned that such private meetings create the appearance of a cozy relationship between the regulator and the regulated community. In this case, the industry’s need to obtain private financing for uranium mining and milling projects should have no relevancy to one of the NRC staff’s top regulatory officials.

⁴ NRC Public Document, ADAMS Document File Identifier ML0834403640.

Sensibly, the NRC Staff found this proposal to be troubling. The staff noted that the uranium industry white paper and proposal failed to take into account the substantive basis for the rulemakings that created §§ 40.4 (definitions that specifically include in situ leach mining within "byproduct" production activities requiring licensing), 40.32(e) (prohibiting byproduct production activities prior to the NEPA process and the issuance of an NRC license). The NRC staff interprets the Part 40 regulations in a manner consistent with the Commission's view that portions of Part 40 regulations should and do apply to ISL operations. *See, In re HRI*, 50 NRC 3, 9 (1999); *see, also*, Nuclear Regulatory Commission, 10 CFR Parts 50, 150, "Uranium Mill Tailings Licensing" 44 Fed. Reg. 50012, 50018 (August 24, 1979) (hereinafter, "NRC 1979 Proposed Rule") ("These proposed amendments will delete paragraph (b) of §40.14 so as to preclude exemptions from the requirements of §§ 40.31(f) and 40.32(e) of Part 40 and amend paragraph (e) of § 40.32 so as to require the denial of applications for licenses were construction is started before the appropriate environmental appraisals are completed and documented").

We believe that industry's arguments are both bad public policy and ignore the substantive reasons why NRC was given mill-licensing authority by Congress in 1978. First, allowing any facility construction before licensing places undue pressure on regulators to cut corners in their review of license applications in order to give the applicant consideration for his or her pre-licensing capital investments. Second, and most important, the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 was enacted by Congress in large part because of the lack of any regulation of uranium recovery prior to the mid-1970s, and shoddy construction and operation of tailings management facilities. Indeed, several "active" tailings facilities that were built in the late-1950s without liners or with total disregard for appropriate site characteristics remain, to this day, sites of extensive groundwater contamination.⁵ NRC's mill-licensing rules in 10 CFR Part 40, proposed in 1979 and published as final rules in October 1980, were promulgated pursuant to UMTRCA to *prevent* further environmental degradation from uranium processing, including prohibiting construction before licensing.⁶

⁵ Examples of such facilities include the Cotter Corp. Canon City, Colorado, mill; the Rio Algom Mining Co. Ambrosia Lake (N.M.) mill; the former Anaconda Co. Bluewater (N.M.) mill; and the Homestake Mining Co./Barrick Gold Corp. mill at Milan, N.M.

⁶ *See, also*, U.S. Nuclear Regulatory Commission, "Uranium Mill Licensing Requirements, 10 CFR Parts, 30, 40, 70, and 150," 45 FR 65521 (October 3, 1980) (hereinafter, "NRC 1980 Final Rule") (in pertinent part, amending 40.32(e) to include a definition of "commencement of construction" as any clearing of land, excavation, or

Even then, the rules did not compensate for mistakes that some agreement states like New Mexico made in allowing companies to construct conventional mill and tailings facilities before receiving licenses. The New Mexico Environmental Improvement Agency, for example, approved the license for the United Nuclear Corp. (UNC) Church Rock mill and tailings facility in early May 1977, more than two years *after* UNC had commenced construction on the facility but about three weeks *prior* to the effective date of the state's first groundwater protection regulations. As a consequence, the facility was constructed in a V-shaped valley overlying both unconsolidated alluvial materials and bedrock and without protective bottom liners. These siting and design deficiencies were magnified by operational failures — overfilling of the South Pond in violation of state freeboard limits and slow response to the appearance of numerous cracks in the starter dam — that led to the catastrophic failure of the dam on July 16, 1979.⁷ The resulting Church Rock tailings spill — 1,100 tons of tailings and 94 million gallons of acidic wastewater — was and remains the largest release of radioactive wastes, by volume, in U.S. history, surpassing the radioactivity released in the Three Mile Island reactor meltdown four months before.⁸ And while the UNC Church Rock facility was not an ISL operation, it serves as a reminder of the wisdom of prohibiting construction before licensing.

Ironically, at the December 11, 2008, public meeting held by the Commission to discuss the NRC's uranium recovery program activities, the Chairman and Mr. Camper, joined by Commissioner Lyons, expressed, in advance of the RIS or any rulemaking in which they would play deciding roles, sympathy with for the uranium industry's need to obtain financial backing for its projects, viewing that need as inexplicably held back by the environmental review processes mandated

other substantial action that would adversely affect the environment of a site" but excluding "site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values").

⁷ U.S. Congress, House Committee on Interior and Insular Affairs, Subcommittee on Energy and Environment, *Mill Tailings Dam Break at Church Rock, New Mexico*, 96th Congress (October 22, 1979) (hereinafter, "Congressional Report on Church Rock Spill").

⁸ Doug Brugge and Jamie L. deLemos, "The Sequoyah Fuels Corporation Release and the Church Rock Spill: Unpublicized Nuclear Releases in American Indian Communities," *American Journal of Public Health*, 97:9 (September 2007).

by NEPA and UMTRCA.⁹ These sentiments are troubling, not only in light of the Commission's own historic rulemaking to regulate uranium processing and tailings disposal, but because they come at a time when the NRC staff expects to be reviewing new ISL license applications for proposed facilities in Wyoming, South Dakota and New Mexico. The public can have little confidence in the integrity of the regulatory process and the agency's political will to enforce its standards and requirements when members of the Commission openly advocate regulatory relief for the uranium recovery industry.¹⁰

⁹ See generally, Tr-1 at 59:22-60:1-3 (Mr. Camper says going through the rulemaking process to get around 10 CFR 40.32 would be "problematic for those that are early in the queue and are striving to find supporters for their projects and so forth"); at 56:13-22 (Chairman Klein states his concern that the industry's inability to work in the winter in Wyoming needs to be balanced against the "public involvement and the processes that we go through"); at 65:7-11 (Chairman Klein indicating that exemptions could be used); at 64:5-15 (Commissioner Lyons voices his support for a rulemaking that would create a "limited work authorization", but that until the rulemaking is complete, "doing it on an exemption basis"); at 64:17-65:5 (Commissioner Svinicki also voicing sympathy for the uranium industry since "rulemakings are very long and can be a very painful processes" [sic], but stating that she would support a rulemaking even if "it's not helpful to the applicants now"); and at 58:17- 59:13 (Commissioner Jaczko stating, in our view correctly, that that exemptions would not be appropriate because "I don't think the intent of that regulation was to establish that principle and then allow us to get around it with exemptions"). The comments by Commissioners and by director-level professional staff disclose a troubling elevation of concern for the industry's financial viability over the AEA mandates to protect worker and public health and safety and the national security in the licensing and regulation of the nuclear fuel chain.

¹⁰ The Energy Reorganization Act, Pub. L. 93-438 (October 11, 1974, eff. Jan. 19, 1975), to attempt to avoid having the regulating and licensing agency for all phases of nuclear energy production also concerned in any way with the promotion and development of the nuclear industry, the law split the Atomic Energy Commission into the Nuclear Regulatory Commission and the Energy Research and Development Administration (ERDA). The NRC promulgated its rules for assuring the occupational and public health and safety and national security in the licensing and regulating of nuclear energy production at 40 Fed. Reg. 8774 (March 3, 1975). It is not inappropriate, under Pub. L. 93-438, for the NRC to evince concern over the ability of uranium industry promoters to find financial backing for their projects—a concern apparently great enough to warrant calling for issuing exemptions, rulemaking, and, generally, expending agency resources on such promotion-related assistance rather than *regulatory* activities. The NRC should be acting as an advocate for (and guarantor of) the long-term sustainability of the regions damaged by previous uranium mining and milling that have yet to be restored to pre-mining and milling condition.

CEQ AND NEPA REQUIREMENTS

Arguably, a proposal such as the RIS, having a potential major impact upon the NEPA process, should be subject to that process before going forward. The impact of taking a rule, promulgated to comply with requirements of the UMTRCA and the NEPA by eliminating exemptions from a mandatory front-end environmental review process,¹¹ and deliberately fashioning a “work-around” that eviscerates the intent of the rule should be evaluated for its potential impacts upon the human and natural environment. The rulemaking statement of consideration was explicit in describing the purpose of the rule in order to comply with UMTRCA, “These proposed amendments will delete paragraph (b) of §40.14 so as to preclude exemptions from the requirements of §§ 40.31(f) and 40.32(e) of Part 40 and amend paragraph (e) of § 40.32 so as to require the denial of applications for licenses where construction is started before the appropriate environmental appraisals are completed and documented.” If the RIS were to go forward with a rulemaking, the ultimate effect would be permitting in-situ leach uranium extraction facilities to go beyond mere exploratory actions. This would violate the NRC’s duties under UMTRCA—it would also violate CEQ regulations and the NEPA.

Complying with the NEPA requires that the NRC consider a “no action” alternative. 40 CFR § 15.02.14(d). There cannot be meaningful examination of such an alternative when the agency provides the potential licensee with a partial license prior to making the environmental consideration necessary to decide if any license should be granted. *See generally*, 40 CFR §1502.13; 42 USC §§ 4332(2)(C)(iii); 4332(2)(E), *see also* Council on Environmental Quality, “NEPA’s Forty Most Asked Questions”, 46 Fed. Reg. 18026 (March 23, 1981) (No. 3, “No Action Alternative”). The command of 40 CFR §1502.2(f) is plain: no agency “shall ... commit resources prejudicing selection of alternatives before making a final decision.” *Id.* Allowing a potential licensee to build all the infrastructure necessary for ISL operations prior to making an environmental soundness determination on that project license effectively forecloses not only the “no action” alternative, but also truncates the number of other alternatives that could be considered (such as, limiting the scope of the proposed operations or mandating specific mitigation measures).

Another aspect of this CEQ regulation is that when the NRC would permit a potential licensee to go forward prior to completing the EIS or EA/FONSI process, the agency is endorsing commitment of resources. This consideration of the

¹¹ NRC 1979 Draft Rule at 50018.

commitment of irreversible and irretrievable resources has long been a guidepost for the NEPA process. *See, e.g., Conner v. Burford*, 836 F.2d 1521 at 1527, 1529, 1531 (9th Cir. 1988). In fact, it guided the Commission's decision in promulgating 10 CFR §40.32(e). Nuclear Regulatory Commission, 10 CFR Parts 50, 150, "Uranium Mill Tailings Licensing" 44 Fed. Reg. 50012, 50018 (August 24, 1979). As the 9th Circuit observed in another context, "consideration of cumulative impacts after the road has already been approved is insufficient to fulfill the mandate of NEPA." *Thomas v. Peterson*, 723 F.2d 754 (9th Cir. 1985). The RIS at issue here would open the door to irreversible and irretrievable commitments of resources by the potential licensee that would prejudice the decision making process in favor of going forward. In the rare instance where such activity was permitted and then the license denied or the would-be licensee ran out of money, there would be irreversible damage to (in the case of New Mexico) delicate ecosystems and, in all likelihood, human as well as plant and animal dependent water supplies. The purpose of engaging in NEPA consideration *before* permitting licensees to engage in regulated activities is to both force an agency such as the NRC to reconsider proposed actions and, "more broadly, to inform Congress, other agencies, and the general public about the environmental consequences of a certain action in order to spur all interested parties to rethink the wisdom of the action..." *NRDC v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988).

The "touchstone of major federal activity constitutes a federal agency's authority to influence nonfederal activity. *U.S. v. Southern Florida Water Management District*, 28 F.3d 1563, 1572 (11th Cir. 1994); *Sierra Club v. Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988); *see also* 40 C.F.R. §1508.18. If the NRC is in a position at the pre-licensing stage to use the threat of veto power on a uranium mining project in order to prevent even such activities as the current 10 CFR 40.32(e) would allow when it knows or should know those activities place the human and natural environment in jeopardy, arguably, under NEPA and CEQ regulations, it has a duty to do so by enforcing the existing regulations. In relation to the subject matter of this Draft RIS, it also has a duty under NEPA, CEQ regulations, UMTRCA and the AEA not to grant exemptions or allow the kind of additional pre-licensing construction activities the uranium industry has requested.

A final consideration is the potential impact implementing the Draft RIS could have on protection of endangered species and their habitats. Any proposed drilling site, particularly in the delicate desert ecosystems of New Mexico, may have endangered species and their supporting habitats that could be harmed even by long before construction of an ISL facility. Failure to properly anticipate and

investigate such impacts prior to permitting is a violation of the Endangered Species Act. 16 U.S.C. §§ 1531-1544 (requiring consultation with appropriate agency prior to permitting).

ENVIRONMENTAL JUSTICE, PUBLIC HEALTH AND SAFETY

The draft RIS, coupled with the troubling comments of some Commission members at the December 11 public meeting, has implications for environmental justice, and in particular whether the NRC is committed to its own environmental justice strategy.¹² This year marks the 30th anniversary of the Church Rock tailings spill, which affected seven different Navajo communities in the Puerco River valley of New Mexico and Arizona.¹³ At the time, Representative Morris Udall told a Congressional hearing that three or more Federal and state regulatory agencies had enough information to foresee the accident.¹⁴ The mill effluent released in the spill had a pH akin to battery acid (about 1.5), and at least four Navajo women sustained acid burns to their feet from wading unknowingly into the wash in the days following the accident.¹⁵ The spill also released high levels of uranium, thorium, radium and polonium, along with various heavy metals, to the Puerco River, which at the time was a source of water Navajo livestock. The combined effects of the 1979 spill and more than 20 years of upstream mine dewatering altered water quality in the river across parts of two states.¹⁶ These and other impacts of past uranium mining and milling in Navajo communities have now been aired before Congress,¹⁷ and several federal agencies, including the NRC, have a continuing obligation to address responsibly both the uranium legacy

¹² See generally, 69 Fed. Reg. 52,040 (Aug. 24, 2004).

¹³ W. P. Robinson, "Uranium Production and its Effects on Navajo Communities Along the Rio Puerco in Western New Mexico," in B. Bryant and P. Mohai (eds.), *Proceedings of the [University of] Michigan Conference on Race and the Incidence of Environmental Hazards* (1990).

¹⁴ Congressional Report on Church Rock Spill at 1-4 (October 22, 1979), *cited in supra* n7.

¹⁵ See, e.g., C. Shuey, "The Puerco River: Where Did The Water Go?" *The Workbook*; XI:1-10, March 1986, and A. J. Ruttenber, et al., "The assessment of human exposure to radionuclides from a uranium mill tailings release and mine dewatering effluent," *Health Physics*; 47(1):21-35, June 1984.

¹⁶ P.C. Van Metre and J.R. Gray. Effects of uranium mining discharges on water quality in the Puerco River Basin, Arizona and New Mexico. *Hydrological Sciences Journal*; 37(5):463-480, Oct. 1992.

¹⁷ U.S. House of Representatives, Committee on Oversight and Government Reform. Hearing on the Health and Environmental Impacts of Uranium Contamination on the Navajo Nation (October 23, 2007). See <http://oversight.house.gov/story.asp?ID=1560>.

and the potential for new uranium development in many of the same communities that were harmed in the past.¹⁸

As the representatives of the Acoma Pueblo, Navajo EPA and the State of New Mexico told the Commission at the December 11, 2008, public meeting, the environment in New Mexico is delicate and sacred, and the people of New Mexico depend upon that natural fabric for survival through physical and spiritual sustenance. The issue for many indigenous people in New Mexico, as Acoma Pueblo told the Commission, is a matter of fundamental human rights. These rights, as the representative of the Navajo EPA stated, historically, have been violated by the United States and the uranium mining industry. Tr-2, 3-15; 20:9-24:17 (20081211).¹⁹ NRC's predecessor agency, the Atomic Energy Commission, contributed to the ongoing uranium legacy by encouraging and facilitating uranium development for the nation's nuclear weapons program. As former Interior Secretary Stewart L. Udall documented in his study of the development of atomic energy during the Cold War era²⁰, as early as 1949 and certainly by the fall of 1952, the AEC knew that uranium mining practices were endangering the miners and their families, but chose not to inform the workers and their families of the immediate and long-term effects of those mining-related exposures.²¹ Today, the NRC has a chance to "do the right thing" by maintaining a reasonable and appropriate standard—the pre-licensing construction ban embodied in 10 CFR 40.32(e)—that is intended to *prevent* a repetition of the injustices perpetrated upon the indigenous and non-indigenous populations of New Mexico and the Southwest by the Federal Government and the uranium industry in years past.

¹⁸ U.S. Environmental Protection Agency, Bureau of Indian Affairs, Nuclear Regulatory Commission, Department of Energy, and Indian Health Service. Health and Environmental Impacts of Uranium Contamination in the Navajo Nation. Five-year Plan (June 9, 2008). See <http://epa.gov/region09/superfund/navajo-nation/index.html>.

¹⁹ ADAMS Identifier ML083520550.

²⁰ STEWART L. UDALL, *THE MYTHS OF AUGUST: A PERSONAL EXPLORATION OF OUR TRAGIC COLD WAR AFFAIR WITH THE ATOM* at 187-199; 280-281 (1994) (although the NRC and DOE had plenty of opportunity, it was not until 1993 that the history of AEC sanctioned experiments on human subjects was revealed; moreover, the NRC did nothing the assist in attempts to fully compensate and provide health services to miners damaged during the time that the AEC "studied" accumulating health data collected from the uranium miners).

²¹ See generally, PETER H. EICHSTAEDT, *IF YOU POISON US: URANIUM AND NATIVE AMERICANS* (1994).

ENVIRONMENTAL TRACK RECORD OF ISL OPERATIONS

Finally, the sentiments expressed by some Commission members that the NRC's regulations are standing in the way of ISL projects moving forward further concerns us because of the poor track record of the ISL industry in preventing surface degradation during operations and in restoring aquifers to pre-mining baseline at the cessation of operations.²² Accordingly, we reiterate here two *recent* examples of the industry's poor performance, taken from our comments on the NRC's draft *Generic Environmental Impact Statement for In-Situ Leach Recovery Facilities*, NUREG-1910 (July 2008).²³

The first example is the pattern of violations of license and permit requirements at Cameco Resources's Smith Ranch-Highland ISL Project in Wyoming by the state's Department of Environmental Quality in March 2008. WDEQ documented extensive environmental damage from surface spills and failure to reclaim surface facilities, and chided the operator for taking nearly 20 years to restore the first wellfield. WDEQ fined Cameco \$1.4 million and ordered extensive remedial measures to bring the facility into compliance with state and federal requirements.²⁴

The second example is the poor record of aquifer restoration at ISL operations in Texas. An independent study of restoration performance found that the vast majority of ISL mines were "unable to meet to meet the original restoration standards for one or more of 26 water-quality indicators."²⁵ In most cases, the original restoration standards were relaxed, or the operators received regulatory variances, because of their unsuccessful attempts at groundwater restoration. These failures should remind the Commission that regulatory vigilance is always

²² Toward the end of the December 11, 2008 public meeting, Chairman Klein asked counsel for NRDC to provide an example or "evidence" of "environmental damage from ISL mining." *See, e.g.*, Tr-II at 71:15-17, 72:10-12, 72:18-20, and 73:4-5. NRDC's expansive comments on the *GEIS*, like those filed by NMELC on behalf of SRIC and other groups, provide a wide range of such examples, and we encourage the Chairman to review those comments.

²³ NMELC Comments for SRIC on the Draft (ISL) *GEIS* with attachments, ADAMS file ML083290420.

²⁴ *See id.*, Exhibit H, Notice of Violation and Settlement between Power Resources Inc. (PRI) and the Wyoming Department of Environmental Quality (20080308) at 376-395 (March 10, 2008).

²⁵ *See id.*, Exhibit K, B.K. Darling, PhD., P.G., Southwest Groundwater Consulting, LLC, *Report on Findings Related to the Restoration of In-Situ Uranium Mines in South Texas* at 451-496.

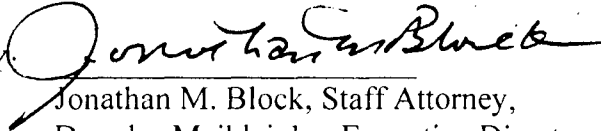
necessary for uranium operations, and that granting even partial relief from the pre-licensing construction ban is inviting more environmental damage at future ISL facilities.

CONCLUSION

Given the above considerations, yielding to the uranium mining industry's wishes for a way around the existing requirements of 10 CFR 40.32(e) would be a serious mistake for the NRC, and a threat to the health and safety of the human and natural environment the NRC is charged with protecting pursuant to UMTRCA and AEA, and through the NEPA process.

Respectfully submitted:

SOUTHWEST RESEARCH AND INFORMATION CENTER

BY: 

Jonathan M. Block, Staff Attorney,
Douglas Meiklejohn, Executive Director,
Eric Jantz, Staff Attorney,
Bruce Frederick, Staff Attorney,
New Mexico Environmental Law Center
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
www.nmelc.org

Contact:

jblock@nmelc.org

(505) 989-9022, Ext. 22