

STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

May 15, 2009

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Chief, Uranium Recovery Licensing Branch,
Division of Waste Management and Environmental Protection,
Office of Federal and State Materials and Environmental Management Programs,
U.S. Nuclear Regulatory Commission
Mail Stop T-8F5,
Washington, DC 20555-0001,

Subject: Proposed Generic Communication; Pre-Licensing Construction at Proposed, Unlicensed Recovery Facilities.
Federal Register / Vol. 74, No. 91 / Wednesday, May 13, 2009 / Notices, page 22599 - [NRC-2009-0138].

Dear Sirs,

The State of Colorado appreciates the opportunity to comment on the subject communication and is pleased the Commission granted an extension to the comment period. It is our opinion that the proposal to allow certain construction activities prior to the issuance of the radioactive materials license is fundamentally flawed, without merit, and should not be issued.

We detail our concerns in the comments below:

1. This proposal is unacceptable as it would allow for construction of facilities prior to the completion of the Environmental Assessment that is required by Part 40, as well as Part 18 of the *Colorado Rules and Regulations Pertaining to Radiation Control*.
2. If adopted, the generic communication may be in conflict with the well construction requirements in the proposed amendments to 10 CFR 40 that are in the draft in-situ rule shared with the states last year. Those requirements would have strict construction and testing requirements for the wells. Therefore potentially, the well fields could be constructed prior to the licensing review being completed and compliance with the requirements confirmed. Until the in-situ rule is finalized, this generic communication should not go forward in order to ensure there is compatibility between the two.
3. Allowing construction of facilities prior to issuance of the license is contrary to long-accepted standards of care, and gives the impression that the license will be issued, no matter what the licensing review finds.
4. In-situ leaching is uranium milling, not mining. Thus the ISL industry should follow the same rules that a conventional mill or heap leach would need to follow. Numerous ISL facilities will have drying and packaging operations associated with them; to allow construction of the facilities prior to regulatory approval seems imprudent, if not illegal under the current Part 40 regulations.
5. Allowing construction of these facilities prior to the license being issued could result in a liability should the license not be granted with full financial assurance in place. Assuming the wells are installed (meeting the proposed standards in Part 40), if the licensee were to abandon the project, would there be surety in place to abandon the wells as required? Well fields without proper financial assurance could lead to serious environmental problems should there be communication between contaminated source aquifers and drinking water aquifers from wells not being maintained.

6. Making this change administratively without rulemaking does not appear to meet the basic standard of care since it can adversely affect the environment and was not previously considered in earlier rulemakings.
7. This proposal could lead to "...significant and long lasting environmental impacts, the propriety of which cannot be ascertained until these environmental appraisals are completed and documented." Installing potentially hundreds of wells through drinking water aquifers prior to a license being issued can result in serious liabilities and should not be allowed.
8. NRC staff noted in their presentation on November 18, 2008 in Denver that there are issues with satellite facilities remote from currently licensed facilities. Would this new approach allow the satellite field to be developed prior to its consideration for a license amendment at the parent facility, even if it has a strong connection? This would seem to exempt an environmental review for the new well fields.

If you have any additional questions relative to these comments, please contact me at (303) 692-3423 or steve.tarlton@state.co.us or Phil Egidi at (970) 248-7162 or phil.egidi@state.co.us.

Sincerely,


Steve Tarlton, Manager
Radiation Control Program

SFT:pve