



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

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

Dear Sir/Madam:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the Environmental Protection Agency (EPA) has reviewed the Nuclear Regulatory Commission's (NRC) Proposed Generic Communication; Pre-Licensing Construction Activities at Proposed Uranium Recovery Facilities/Draft Regulatory Issue Summary (RIS) 2009-XX, "Pre-Licensing Construction Activities at Proposed Uranium Recovery Facilities."

The Commission directed that NRC staff develop a proposed rulemaking to revise 10 CFR 40.32 to determine whether limited work authorization (LWA) provisions were appropriate for in-situ uranium facilities. This was in response to inquiries from the uranium recovery industry regarding pre-licensing construction activities and their opinion that 10 CFR 40.32 (e) does not apply to in-situ recovery (ISR) facilities. As stated in the draft RIS, NRC staff does not agree with industry's interpretation of this regulation. NRC also indicated that there is no LWA provision for uranium recovery facilities in the regulations. EPA supports NRC's position.

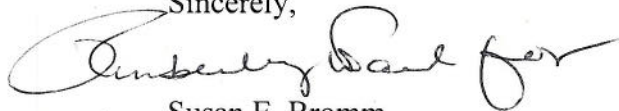
However, if an applicant wishes to perform pre-licensing construction activities apart from those permitted under 10 CFR 40.32(e), NRC is considering granting an exemption on a case-by-case basis. EPA offers the following comments for consideration if NRC decides to proceed with any exemptions for pre-licensing activities for ISR facilities:

1. The draft RIS indicates that depending on the specific activities included in the exemption request, that an environmental assessment (EA) may be required. According to 10 CFR 51 and NUREG 1748, there is no categorical exclusion for pre-licensing activities regarding the construction of ISR facilities. Therefore, an EA would be the minimum NEPA document required.

2. Depending on the activity, NRC should emphasize that certain requirements still apply. This includes activities such as permitting for construction of injection wells and responsibilities related to the Safe Drinking Water Act, Uranium Mill Tailings Radiation Control Act, Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act.
3. NRC should also consider requiring applicants to include a site redress plan similar to that for LWAs in the reactor program. This should also include information about the financial assurance mechanism that will be used in the event of a denial of the license.

We appreciate the opportunity to review this RIS and look forward to reviewing the proposed rule. If you have any questions concerning this matter you may contact me at (202) 564-5400. You may also call my staff point of contact, Marthea Rountree. She can be reached at (202) 564-7141.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan E. Bromm".

Susan E. Bromm
Director
Office of Federal Activities