

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 40-9068]

[NRC-2009-0391]

**Notice of Availability of Draft Environmental Assessment and Opportunity to Provide  
Comments for Exemption Request for Lost Creek ISR, LLC, Sweetwater County, WY**

**AGENCY:** U.S. Nuclear Regulatory Commission

**ACTION:** Notice of availability.

**DATES:** Comments regarding this draft Environmental Assessment must be received by  
**[INSERT DATE: 30 DAYS FROM DATE OF PUBLICATION].**

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Cohen, Team Leader, 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, Washington, DC, 20555. Telephone: (301) 401-7182; fax number:  
(301) 415-5369; e-mail: [stephen.cohen@nrc.gov](mailto:stephen.cohen@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

The U.S. Nuclear Regulatory Commission (NRC) staff, pursuant to 10 CFR 51.33, is publishing a draft environmental assessment (EA) for public review and comment. The draft EA pertains to the planned issuance of an exemption from the commencement of construction requirements in 10 CFR 40.32(e) to Lost Creek ISR, LLC. The request for this exemption was submitted to the NRC staff on July 2, 2009. Also pending before the NRC is Lost Creek's earlier license application for authorization to operate an in situ recovery (ISR) uranium milling facility in

Sweetwater County, Wyoming. Issuance of the requested exemption would authorize Lost Creek ISR, LLC to conduct certain site preparation activities at, and in, the vicinity of its proposed ISR site. Based on the draft EA, presented below, the NRC staff proposes to make a Finding of No Significant Impact (FONSI) regarding the requested exemption.

## DRAFT ENVIRONMENTAL ASSESSMENT

### I.0 INTRODUCTION

By letter dated July 2, 2009, Lost Creek ISR, LLC (the Applicant) submitted an exemption request (LCI, 2009) to the NRC. The Applicant seeks an exemption from the “commencement of construction” provisions of 10 CFR 40.32(e) for certain activities described in its exemption request. The Applicant had initially submitted an application for a new source material license on October 30, 2007 (LCI, 2007), for a proposed in situ recovery (ISR) facility in Sweetwater County, Wyoming. After being withdrawn, the application for authorization to conduct uranium milling operations was resubmitted on March 28, 2008, and is still under NRC review (LCI, 2008).

The NRC staff is considering issuing an exemption to the Applicant that would grant the July 2, 2009, request, in part. The exemption would authorize the Applicant to undertake certain site preparation activities for its proposed Lost Creek ISR operations before a decision is made on whether to authorize uranium milling. Granting this exemption would not mean that the NRC has decided to issue an operating license to the Applicant. The Applicant would be undertaking these site preparation activities with the risk that its license application may later be denied. The NRC has prepared a draft EA in support of this exemption in accordance with the

requirements of 10 CFR 51.21. The EA contains the information required by 10 CFR 51.30(a). Based on this EA, the NRC is proposing to make a FONSI regarding the exemption request.

## **2.0 BACKGROUND**

On October 9, 2007, the NRC published its limited work authorization (LWA) regulations for nuclear power plants (72 FR 57416). As part of this final rule, a definition of construction was added to 10 CFR 51.4. Site preparation activities that were deemed not to have a direct nexus to radiological health and safety were listed in 10 CFR 51.4 as activities not included within the “construction” definition. On this point, 10 CFR 51.4 states, in relevant part, that “construction” does not include:

- Site exploration, including necessary borings to determine foundation conditions or other reconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;
- Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;
- Erection of fences and other access control measures;
- Excavation;
- Erection of support buildings (such as, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

- Building of service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

However, the LWA rule did not make a corresponding change to 10 CFR Part 40. Thus, in contrast to the above portions of 10 CFR 51.4, 10 CFR 40.32(e) states that, with some limited exceptions, “commencement of construction” prior to license issuance is grounds for license denial. Section 40.32(e) states, in relevant part, as follows:

The term “commencement of construction” means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary 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.

While this inconsistency in the regulations exists, the NRC staff will review exemption requests to consider whether site preparation activities will be permitted before an operating license is issued.

### **3.0 PROPOSED ACTION**

The NRC proposes to grant an exemption that will allow the Applicant to conduct certain site preparation activities that are currently allowed under 10 CFR 51.4, notwithstanding the 10 CFR 40.32(e) provisions discussed above. The scope of the Applicant’s July 2 exemption request

includes the following 10 items. The NRC staff, as part of its safety review of the request, is considering approving each item on the list as an exempted activity, except for part of Item 2 and all of Item 9.

1. Leveling and surfacing of the area around the plant and maintenance building.
2. Construction of the plant and maintenance buildings – maintenance building construction as approved by the NRC staff. Construction of the plant would not be approved because this activity does not meet the definition of any activity not considered “construction” under 10 CFR 51.4.
3. Install household septic systems for the plant and maintenance buildings.
4. Install fence around the plant and maintenance building area.
5. Upgrade existing road access from the west to the plant.
6. Upgrade existing road access from the east to the plant.
7. Install fence for early wellfield area.
8. Install power line to the plant and maintenance buildings and drillers shed.
9. Drill and vase up to four deep wells – This activity would not be approved by NRC staff because this activity has a direct nexus to radiological safety and is, therefore, considered “construction” under 10 CFR 51.4.
10. Construct a drillers shed and staging area.

#### **4.0 PURPOSE AND NEED FOR THE PROPOSED ACTION**

As indicated by the above list, the Applicant seeks permission to engage in certain site preparation activities before it is authorized to conduct uranium milling operations. The NRC

staff proposes to grant the exemption request, in part, and allow the Applicant to begin site preparation activities.

## **5.0 SCOPE OF REVIEW**

This EA is being prepared pursuant to 10 CFR 51.21, which states, “[a]ll licensing and regulatory actions subject to this subpart require an environmental assessment...” The only two exceptions to this rule are those actions requiring environmental impact statements, and those that are categorically excluded or identified as otherwise not requiring environmental review pursuant to 10 CFR 51.22. Exemptions are not currently covered by any categorical exclusion, and, therefore, an EA is required for this action.

## **6.0 ALTERNATIVES**

The staff considered two alternatives in this EA, granting the request (the proposed action) and not granting the request (the no action alternative). The no action alternative is to not grant the exemption and not allow the Applicant to engage in any site preparation activities before an operating license is issued. If the NRC does not grant the exemption, the Applicant would need to wait until a decision is made on its license application request.

## **7.0 IMPACTS OF THE NO-ACTION ALTERNATIVE**

There are no environmental impacts of not granting the exemption.

## **8.0 IMPACTS OF THE PROPOSED ACTION**

In preparing this EA, the NRC staff reviewed the Applicant's exemption request to determine if the requested activities fall within one of the categories of site preparation activities that are not "construction" under 10 CFR 51.4. As indicated in Sections 2.0 and 3.0, the staff intends to exempt only those activities that, pursuant to 10 CFR 51.4, are not "construction." The impacts of those activities allowed by this exemption, which are not considered to be "construction" under 10 CFR 51.4, are not evaluated in this EA. However, as reflected in Section 12 below, the staff plans to condition any exemption approval so as to protect endangered species and cultural and historic resources from the effects of site preparation activities.

The impacts of all site preparation activities will be evaluated as cumulative impacts in the supplemental environmental impact statement (SEIS) being prepared for this site. The NRC staff expects to issue the draft SEIS for comment in December 2009.

## **9.0 OTHER FEDERAL AND STATE AGENCIES**

Several regulatory agencies will be directly involved with the review and approval of site preparation activities at the proposed Lost Creek project, as well as later construction activities. The U.S. Bureau of Land Management (BLM) will require that a Plan of Operations and associated EA be submitted and approved before allowing any disturbance greater than five (5) acres. Part of this process entails a bond estimate to be submitted to BLM for approval. BLM currently oversees the protection of cultural resources and will continue to do so under all future construction and operation activities.

The Wyoming Department of Environmental Quality (WDEQ) will also have significant oversight of the construction activities through its mine permit process. The Permit to Mine application

submitted to WDEQ in December 2007, describes the facility as it is intended to be constructed. The site preparation activities described in the July 2 exemption request will not commence until the Permit to Mine is issued by WDEQ, or unless such activities are approved as part of a Drill Notification or other authorization. The Applicant expects the Permit to Mine to be issued by the WDEQ in November of 2009.

## **10.0 AGENCIES CONSULTED**

The NRC staff is currently consulting with the Wyoming State Historic Preservation Office, the U.S. Fish and Wildlife Service (FWS), the BLM, and the WDEQ regarding the site preparation activities discussed in this EA.

## **11.0 CONCLUSIONS**

This EA meets the requirements of 10 CFR 51.21. The purpose of this review was to describe the proposed action and alternatives to the proposed action. Impacts associated with the site preparation activities not considered to be part of “construction” per 10 CFR 51.4 have not been evaluated for the reasons discussed above. The NRC staff concludes there will be no significant NEPA impacts caused by the action considered in this EA, because none of the activities approved by this action are considered “construction” under 10 CFR 51.4 for purposes of Part 51 environmental analyses. Additionally, as reflected below, the staff’s approval will be conditioned to ensure that endangered species and cultural and historic resources are protected.

## **12.0 PROTECTIVE CONDITIONS**

As part of its safety review of the July 2 exemption request, the NRC staff plans to condition any exemption approval to ensure that endangered species and cultural and historic resources are protected. As drafted, these conditions include the following:

1. All construction associated with the proposed development will be completed in compliance with the National Historic Preservation Act of 1966 (as amended) and its implementing regulations (36 CFR Part 800), and the Archaeological Resources Protection Act of 1979 (as amended) and its implementing regulations (43 CFR Part 7). In order to ensure that no unapproved disturbance of cultural resources occurs, any work resulting in the discovery of previously unknown cultural artifacts shall cease. The artifacts shall be inventoried and evaluated in accordance with 36 CFR Part 800, and no disturbance shall occur until the Applicant has received authorization from NRC to proceed.
2. The Applicant will adhere to all construction restrictions required by the WDEQ, BLM, and FWS regarding disturbances to endangered species habitat.

## **13.0 REFERENCES**

Lost Creek ISR, LLC; Application for a Source Materials License; October 30, 2007; (ADAMS Accession No. ML073190539).

Lost Creek ISR, LLC; Resubmitted Application for a Source Materials License; March 20, 2008; (ADAMS Accession No. ML081060525).

Lost Creek ISR, LLC; Exemption Request to Allow Pre-Licensing Activities; (ADAMS Accession No. ML091940438).

## END OF DRAFT ENVIRONMENTAL ASSESSMENT

**ADDRESSES:** The NRC is requesting comments regarding this draft EA. Comments must be submitted or postmarked by [INSERT DATE: 30 DAYS FROM THE DATE OF PUBLICATION].

Please include Docket ID NRC-2009-0040-9068 in the subject line of your comments.

Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments in the following manner:

**Electronic Filing Through Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2009-0391**.

Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail

[Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RDB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The **Lost Creek ISR, LLC exemption request** is available electronically under ADAMS Accession Number ML091940438.

**Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2009-0391**. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

Dated at Rockville, Maryland, this 2<sup>nd</sup> day of November, 2009.

For the U.S. Nuclear Regulatory Commission.

**/RA/**

Keith I. McConnell, Deputy Director,  
Decommissioning and Uranium Recovery  
Licensing Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Federal and State Materials  
and Environmental Management Programs,