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Supplemental Environmental Impact Statement for Proposed Dewey-Burdock In-Situ Uranium Recovery Project

Comment On: NRC-2012-0277-0001

Supplemental Environmental Impact Statement for Proposed Dewey-Burdock In-Situ Uranium Recovery Project in Custer and Fall River Counties, SD

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General Comment

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NRC-2012-0277 Dewey-Burdock SEIS130110

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Uranium Watch

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January 10, 2013

Ms. Cindy Bladey, Chief
Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Docket ID NRC-2012-0277; Comments on the Draft Supplemental Environmental Impact Statement (NUREG-1910, Supplement 4, Volumes 1 and 2), Proposed Dewey-Burdock In Situ Leach Uranium Mine, Custer and Fall River Counties, South Dakota.

Dear Ms. Bladey:

Below please comments by Uranium Watch (UW) on the Draft Draft Supplemental Environmental Impact Statement (SEIS) for the Powertech (USA) Inc. (Powertech, or Applicant) proposed Dewey-Burdock In Situ Leach Uranium Project, South Dakota (Docket No. 40-9075), published November 2012.

GENERAL COMMENTS

1. Throughout the SEIS, the NRC makes reference to the Powertech Application, without providing a specific citation to the page or section of the referenced document; for example, "Powertech 2011." Powertech 2011 is hundreds of pages, making it almost impossible for a commenter to determine the source of the referenced material. The SEIS relies on the Powertech submittals as a basis for data and conclusions, without providing justification for relying on information the Applicant provided. Further, the NRC website with a link to the Application Documents,¹ only leads to a list of the 2009 Application

¹ <http://www.nrc.gov/materials/uranium-recovery/license-apps/dewey-burdock.html>

Documents.² In order to access subsequent application documents, one must search ADAMS, making public access to the Application that much harder.

2. Additionally, the SEIS relies on the draft License. The most recent version of SUA-1600 for the Dewey-Burdock project has not yet been made publicly available. The current draft license, obviously issued in response to the Applicant's comments on the July 31, 2012, draft License, should have been available for public review prior to the end of the comment period.

SPECIFIC COMMENTS

3. SIES, Geology and Soils, Operation, page xxxii, lines 32 and 33, states:

Potential soil contamination in proposed land application areas will be mitigated by implementing soil collection and monitoring procedures.

COMMENT

3.1. Monitoring is not "mitigation." Monitoring only identifies problems and levels of contamination that would need to be "mitigated." All the monitoring in the world will not serve to mitigate or remediate ground and surface water contamination from ISL operations. Stating that an impact will be "mitigated" is not the same as evaluating the nature and extent of the impact and its environmental impacts.

4. SEIS, Section 2.1.1.1.2.3, Wellfields, page 2-11, lines 22 to 30, states:

Prior to finalizing the design of wellfields, the applicant would conduct closely spaced and localized delineation drilling to refine information on the location, grade, thickness, and production capability of the ore. The applicant estimated that 248 delineation holes (77 holes at B-WF1 and 171 holes at D-WF1) would be drilled during the construction phase of the proposed project (Powertech, 2010c). To estimate and manage ore production, geologic and geophysical data from the drill holes would be analyzed to determine the depth of the mineralized zone and confining units, identify and locate potential barriers to groundwater flow caused by clay stringers, and determine the thickness and grade of ore deposits.

COMMENT

4.1. This section indicates that Powertech, the Nuclear Regulatory Commission (NRC), Bureau of Land Management (BLM), and the public do not have all the baseline data necessary to characterize and evaluate the relevant impacts related to the depth of the mineralized zone and confining units, the potential barriers to groundwater flow caused by clay stringers, and the thickness and grade of ore deposits. As with other necessary

² <http://pbadupws.nrc.gov/docs/ML0928/ML092870160.html>

baseline data, the National Environmental Policy Act (NEPA) process is incomplete without all of the availability of the required baseline data necessary to evaluate the potential environmental impacts, necessary to develop necessary mitigative measures, necessary to determine cumulative impacts, and necessary to determine whether there will be unnecessary and undue degradation of the environment. The NRC and BLM cannot defer the gathering of significant baseline data and still be in compliance with the baseline data gathering requirements under NEPA. See Comments 5.1. to 5.5, below.

5. SEIS, Section 2.1.1.1.2.3.4, Wellfield Hydrogeologic Data Packages, page 2-18, lines 8 to 26 states:

The applicant's delineation drilling results and pumping test data would be included in wellfield hydrogeologic data packages, which would be submitted for review and evaluation to the Safety and Environmental Review Panel (SERP), which is established by NRC requirements (Powertech, 2011). The wellfield hydrogeologic data package would describe the wellfield, including (i) production and injection well patterns and location of monitor wells; (ii) documentation of wellfield geology (e.g., geologic cross sections and isopach maps of production zone sand and overlying and underlying confining units); (iii) pumping test results; and (iv) sufficient information to demonstrate that perimeter production zone monitor wells adequately communicate with the production zone (Powertech, 2011). The SERP would review the wellfield hydrogeologic test results and documentation to determine whether monitoring wells are hydrologically connected to the injection and production wells. The wellfield hydrogeologic data package and written SERP evaluation would be maintained on site and be available for NRC review. By license condition, wellfields in the partially saturated portion of the Dewey-Burdock Project area, specifically wellfields B-WF6, B-WF7, and B-WF8 (see Figure 2.1-6), will be prohibited from operating until NRC staff have reviewed and approved the hydrogeologic data packages for those wellfields (NRC, 2012).

COMMENT

5.1. The SEIS describes a process whereby significant baseline wellfield data will be collected AFTER the SIES is completed and AFTER the Applicant has received its License. The SEIS must include the relevant baseline conditions at the site, including the information regarding the wellfields geology and hydrology described in Section 2.1.1.1.2.3.4. These baseline data packages will determine many of the potential environmental effects of the proposed Project and should be available as part of the NEPA process. All feasible pump tests and other data collection and analyses must be undertaken as part of the NEPA process in order to determine the potential impacts of the project. The NRC and BLM cannot use the deferral of the gathering of significant baseline data to comply with the baseline data gathering requirements under NEPA.

5.2. Wellfield pump tests data “would be used to evaluate and confirm hydraulic connection between the production zone and perimeter production zone monitor wells and hydraulic isolation (i.e., confinement) between the production zone and overlying and

underlying sand units, and it “would be used to demonstrate that solutions can be controlled with typical wellfield bleed rates and to detect and identify leakage due to anomalies such as improperly plugged wells and exploration boreholes.” However, this important data that would be used to demonstrate the feasibility of the proposed ISL project in the various wellfields and to demonstrate that solutions can be controlled” is currently not available and, when available, will not be submitted directly to the NRC, nor (according to the SEIS) will it be made available for public review. The data will be evaluated by the Safety and Environmental Review Panel (SERP) established by the Licensee. According to the SEIS, the Licensee will only be required to maintain the data on site and be available for NRC review. In other words, the NRC would be handing over regulation of significant aspects of the ISR operation to the Licensee and making sure that significant data regarding the hydrogeology of the wellfields is not made publicly available.

5.3. The information in the SEIS regarding the review of the wellfield data by the SERP and maintenance of the data at the Dewey Burdock site is contradicted by the draft License (SUA-1600) dated July 31, 2012 (ML12207A480). License Condition 10.10 specifically directs the Licensee to submit the wellfield packages to the NRC prior to conducting principal activities at each new wellfield. The draft License contains additional specific information regarding the data that was not included in the SEIS. The SEIS contains certain assumptions that might not conform to, or reflect, information in the 2012 or 2013 draft License. Information in the SEIS should reflect the information contained in current draft License SUA-1600, which is currently not publicly available, as part of this NEPA review process.

5.4. At this time the SEIS can only be a preliminary environmental assessment because “data that would demonstrate that solutions can be controlled with typical wellfield bleed rates” and data that would “detect and identify leakage due to anomalies such as improperly plugged wells and exploration boreholes” has not been collected and submitted to the NRC. Without this data, any assumptions regarding the impacts to the groundwater from the operation of the proposed ISL are speculative and without a factual basis. Therefore, the NRC cannot demonstrate that the ISL solutions can be controlled and does not have the required scientific basis for issuance of the License.

5.5. The wellfield hydrogeologic data packages must be submitted directly to the NRC and BLM for their review and evaluation prior to the final licensing and permitting decisions. The data packages must be made available to the public for review and comment as part of the NEPA process, not after that process is complete. The data packages are necessary to evaluate the potential environmental impacts, necessary to develop necessary mitigative measures, necessary to determine cumulative impacts, and necessary to determine whether there will be unnecessary and undue degradation of the environment.

6. SEIS, Section 2.1.1.1.2.3.5 Well Construction, Development, and Testing, page 2-18, lines 38 - 40, states:

Depending on state and local regulations, such mud pits are backfilled and graded or are alternatively emptied and cleaned, and residual solids and liquids transported and disposed of offsite (NRC, 2006).

COMMENT

6.1. The SEIS should state the specific state and local regulations regarding the reclamation of mud pits that would apply. If it depends on state and local regulations, those applicable regulations can be identified, stated, and taken into consideration in the SEIS.

7. SEIS, Section 2.1.1.1.2.4.2, Land Application Option, page 2-25.

COMMENT

7.1. Powertech applied for the Groundwater Discharge permit in June 2012 and has yet to apply for the NPDES Permit. Since these permits have not been issued, significant information related to the treatment and discharge of water is not available for NRC and public review in the SEIS process.

8. SEIS, Section 2.1.1.1.4, Aquifer Restoration Activities, page 2-34, lines 35 to 37 and 44 to 46, states:

Before beginning wellfield operations, the applicant must determine background water quality by sampling and analysis of water quality indicator constituents in the mineralized zone(s) and underlying and overlying aquifers across each wellfield (Powertech, 2009b).

Background water quality samples obtained from monitoring wells placed in the ore-bearing aquifers, as well as the underlying and overlying aquifers (where present), will be used to define excursion parameters and UCLs.

COMMENT

8.1. Again, significant baseline data is not available. Therefore, the SEIS cannot provide a full discussion of the background water quality data and the relevant aquifer restoration goals, both within the without the ore zone. At this time we do not know if the relevant constituents fall above or below the maximum contaminant levels (MCLs) in 10 CFR Part 40, Appendix A, Table 5C, and the projected groundwater quality standards that would be implemented, as part of the aquifer restoration phase. There is a significant omission in the SEIS.

8.2. The SEIS fails to provide information regarding the relevant factors that might influence the ability of the aquifer to achieve background contaminant levels, or other levels, during aquifer restoration. For example, information regarding the success of ISL aquifer

restoration in similar geological and hydrogeological conditions should have been provided and discussed.

8.3. Water quality data is also necessary to determine whether the aquifer could serve as a future source of drinking water and whether the aquifer is eligible for a drinking water source exemption. This information should be available and analyzed in this NEPA process.

8.4. Additionally, background water quality samples should have been available so that the SEIS would include specific and detailed information regarding the excursion parameters and upper control limits (UCLs). Such information should have been available for public comment in the SEIS.

9. SEIS, Section 2.1.1.2 Alternative Liquid Waste Disposal Options, pages 2-54 to 2-59.

COMMENT

9.1. The SEIS references applicable land disposal, deep well injection, and off-site discharge standards and regulations, but fails to provide a comparison of the specific standards. Also, the SEIS fails to identify all of the expected radiological and non-radiological constituents in the liquid effluents that could be discharged to the environment via deep well injection, land application, or direct discharge. The SEIS does not provide sufficient information to make an informed comparison of the environmental impacts of the various liquid effluent disposal alternatives.

9.2. UW supports the use of evaporation ponds for the evaporation of liquid wastes. The other disposal options involve one or more of the following: 1) treatment to remove radium and uranium, which might not be effective; 2) discharge contaminants that are not subject to a discharge standard; 3) contamination of large areas for land disposal of liquid effluents; 4) removal of only some hazardous constituents (radium, uranium, and zinc) prior to discharge or land application; 5) potential for aquifer contamination through deep well disposal and land application; 6) unknown impacts of animal consumption of feed irrigated with contaminated ISL waste water, and 7) unknown impacts from human consumption of animals that have fed on alfalfa irrigated with ISL waste water.

10. SEIS, Section 4.4.1.1.1, Construction Impacts, page 4-31, lines 37 to 42.

COMMENT

10.1. This section describes the construction, use, and reclamation process for well construction, exploration drilling, and delineation drilling and mud pits. The SEIS failed to include any information regarding initial radiological survey of the drilling area and mud pit to determine background and a post construction radiological survey to assure that no contaminants from the drill hole remain on the surface. Any surface contamination above background should be removed and appropriately disposed of.

Background and post construction radiological surveys are routine for uranium exploration drilling and borehole construction on federal lands in Utah and should be implemented for all drilling operations and mud pit construction and use at the Dewey-Burdock site. The SEIS also states (Section 4.4.1.1.4, page 4-34, Lines 31 to 33): “Any soils that have the potential to be contaminated will be surveyed to identify and clean up areas with elevated radionuclide concentrations, in accordance with NRC regulations at 10 CFR Part 40, Appendix A, 33 Criterion 6 (6).” This would include soils impacted by drilling and mud pit construction and use.

11. SEIS, Section 4.4.1.1.2, Operations Impacts, page 4-32, lines 43 to 48, states:

The applicant will also collect and monitor soils for yellowcake and ion-exchange resin contamination along transportation routes and in wellfield areas where spills and leaks are possible (Powertech, 2009a). If soil is contaminated by a pipeline spill, pond leak, or vehicle accident, the applicant will remove the contaminated soil and dispose of it at a licensed disposal facility to ensure all impacts are temporary (Powertech, 2009a).

COMMENT

11.1. THE SEIS should identify the type of licensed disposal facility and the name and location of potential disposal facility for the disposal of soils contaminated by spills and leakage. According to recent spill records, in 2012 over 12,000 gallons of injection and disposal well fluids spilled in at least 15 incidents at NRC-licensed ISL facilities.³ The Applicant has indicated that they would dispose of their solid 11e.(2) byproduct material at the White Mesa Uranium Mill in southeast Utah. The SEIS estimates that the amount of such wastes from the operation and decommissioning of the Dewey-Burdock Project would be approximately 4,873 cubic yards. The White Mesa Mill is only permitted to dispose of 5,000 cubic yards of ISL waste from a single licensed source, pursuant to License Condition 10.5.⁴ Therefore, it is not reasonable to assume that the Applicant would be able to dispose of soils contaminated by spills, leaks, or other incidents at the White Mesa Mill. The NRC should require the Applicant to make prior arrangements for disposal of contaminated soils at a licensed facility, prior to commencing construction and operation of the ISL project.

11.2. Note, also, that the citation “Powertech, 2009a” is totally inadequate. Where, exactly, in that document is the relevant information located?

12. SEIS, Section 4.4.1.1.2, Operations Impacts, page 4-33, lines 8 to 10, states:

³ <http://www.wise-uranium.org/new.html>

⁴ http://www.radiationcontrol.utah.gov/Uranium_Mills/IUC/cell4b/docs/2010/permitMod_LAmend/4BER%20UT1900479%20061410.pdf

The NRC will require liquid wastes injected into potential Class V injection wells at the proposed project to be treated to concentrations below hazardous levels and radioactive waste thresholds at 10 CFR Part 20, Subparts D and K, as wells as Appendix B, Table 2, Column 2.

COMMENT

12.1. The SEIS should specifically include a list of the hazardous levels and radioactive waste thresholds found at 10 CFR Part 20, Subparts D and K, and Appendix B, Table 2, Column 2.

13. SEIS, Section 4.4.1.2.2, Operations Impacts, page 4-35, lines 48-50, and page 4-36, lines 1-15.

COMMENT

13.1. This section discusses the potential impacts of land application of waste fluids. SEIS states that the salinity of the treated wastewater could increase the salinity of soils, which would disperse soil particles (making the soil less permeable), and that land application of liquid wastes could cause radiological and/or other constituents (e.g., selenium and other metals) to accumulate in the soils and vegetation. In spite of these and other potential impacts, the SEIS concludes that that “the environmental impacts to geology and soils while operating the land application disposal system for liquid wastes will be SMALL.” There is no basis for this conclusion. Further, this conclusion does not include an assessment of the cumulative environmental impacts over time.

13.2. The SEIS fails to evaluate the environmental impacts to other sites where ISL wastes have been applied to land. The SEIS should include a full assessment of the long-term impacts from other ISL waste land application programs.

13.3. The assurances that the Applicant will monitor soils and sediments for contamination in areas used for land irrigation and keep the effluent within established water quality standards does not mean that the quality of the soil will not deteriorate over time. The SEIS completely fails to assess the short-term and long-term impacts of land application of liquid wastes on the soil quality, vegetation, on the native and domestic animals that will consume the vegetation on the irrigated land, and on the animals (including humans) that will consume the native and domestic animals that will consume the irrigated vegetation. The SEIS does not provide a description of the various food chains and how they will be impacted over time.

13.4. The NRC must require long-term monitoring and evaluation of the land application program, including radiological and non-radiological soil contaminant levels, salinity, soil permeability, vegetation sampling, and other soil and vegetation quality parameters to determine the impacts of land application over time.

13.5. UW believes that land application of the liquid ISL wastes is not an acceptable alternative. The SEIS failed to adequately assess the short-term and long-term impacts of land disposal on human health and the environment. The SEIS improperly relied on assumptions that monitoring and conformance with existing, though inadequate, regulatory standards would be protective of public health and safety and the environment.

14. SEIS, 4.4.1.2.3 Aquifer Restoration Impacts, page 4-36, lines 1-15.

COMMENT

14.1. This section states that during aquifer restoration, the applicant will continue routine soil monitoring for contamination of land application areas and must ensure that radionuclide contaminant levels do not exceed the release standards in 10 CFR Part 20, Appendix B. However, the SEIS provides no information regarding the mitigative measures that would have to be implemented if the radionuclide contaminant levels "exceed the release standards in 10 CFR Part 20, Appendix B." The SEIS improperly equates monitoring with assurances that no contamination will occur above established standards. The SEIS must fully describe the mitigative measures that must be taken if radionuclide contaminant levels exceed the release standards and if there is other degradation of the lands impacted by waste water application.

14.2. The public has never accepted the concept of direct land disposal of radioactive wastes from uranium recovery or any other industrial process. The standards in 10 CFR Part 20, Appendix B, should apply to planned deposition of radioactive and chemically contaminated wastes for irrigation purposes. The standards are not protective of the public, soils, surface and ground water, flora, and fauna.

15. SEIS, 4.4.1.2.3 (Groundwater Impacts) Operational Impacts, page 4-47, lines 13 to 16, states:

The applicant's NPDES permit requirements will ensure that surface runoff at the ISR 14 facilities and irrigation fields will not contaminate surface water bodies. Implementation of mitigation measures will control erosion, runoff, and sedimentation over the land application areas.

COMMENT

15.1. The SEIS, Table 1.6-1. Environmental Approvals for the Dewey-Burdock Project, page 1-12, states that the Applicant has yet to submit an application for an NPDES permit to the South Dakota Department of Environment and Natural Resources. The Applicant submitted a Ground Water Discharge Permit application in June 2012, which is still under review. Therefore, the SEIS cannot make **ANY** assumptions regarding NPDES and GWDP requirements that would be applicable to the ISL Project.

OTHER COMMENTS

16. SERP Process: The NRC must not use the SERP process to circumvent the license application and NEPA review process. In fact, the NRC as part of the NEPA and licensing process, must, at the outset, clearly delineate the types of decisions that can be made by the Licensee's Safety and Environmental Review Panel. The issue of the use of a SERP and the environmental impacts of the use of the SERP process must be evaluated as part of the NEPA process.

17. The July 2012 Draft License SUA-1600, License Condition 9.4, Change, Test, and Experiment License Condition states:

(A) The licensee may, without obtaining a license amendment pursuant to 10 CFR 40.44, and subject to conditions specified in (B) of this condition:

i Make changes to the facility as described in the license application (as updated);

ii Make changes to the procedures as described in the license application (as updated); and

iii Conduct tests or experiments not described in the license application (as updated).

COMMENT

17.1. The information in License Condition 9.4 is woefully incomplete. It vaguely references—without specificity or particularity—the facility and procedures that are described in thousands of pages of license application documents. It vaguely references—without specificity or particularity—tests or experiments **not** described described in thousands of pages of license application documents. It vaguely references—without specificity or particularity—various aspects of previously submitted and evaluated materials: 1) occurrence of an accident previously evaluated in the license application (as updated); 2) occurrence of a malfunction of a facility structure, equipment, or monitoring system (SEMS) important to safety previously evaluated in the license application (as updated); 3) consequences of an accident previously evaluated in the license application (as updated); 4) consequences of a malfunction of an SEMS previously evaluated in the license application (as updated); 5) possibility for an accident of a different type than any previously evaluated in the license application (as updated); 6) possibility for a malfunction of an SEMS with a different result than previously evaluated in the license application (as updated); 7) departure from the method of evaluation described in the license application (as updated) used in establishing the final safety evaluation report (FSER), environmental impact statement (EIS), environmental assessment (EA) or technical evaluation reports (TERs) or other analysis and evaluations for license amendments; and 8) any SEMS that has been referenced in a staff SER, TER, EA, or EIS and supplements and amendments thereof. It also references (LC 94.(C)) “NRC’s previous conclusions, or the basis of or analysis leading to those conclusions, regarding actions, designs, or design configurations analyzed and selected in the site or facility

SER, TER, and EIS or EA,” including “all supplements and amendments, and SERs, TERs, EAs, and EISs issued with amendments to this license.”

17.2. Based on the lack of specificity and particularity regarding thousands of pages of Applicant and NRC generated records, it would be extremely difficult, if not impossible, for the Applicant, NRC, other state and federal regulatory agencies, and the public to determine under what circumstances the Licensee would be required to submit a license amendment application and under what circumstances such an amendment request would not be required. As it is, the NRC will leave that decision to the SERP, which will not notify the NRC of any such decisions until after the fact and in some instances until almost a year after a change or action has occurred. Clearly, this is not a very sensible way to regulate uranium recovery operations. The NRC must require the Licensee to submit a question regarding the need for a license amendment directly to NRC staff for their review and decision. Such requests must be made publicly available and be subject to public review and comment.

18. The SEIS should list all of the data and information that the Licensee will be required to submit after the completion of the SEIS and after the issuance of the License. The SEIS should evaluate that data and information and determine how the new information would shed light on the assessment of the environmental impacts of the Dewey-Burdock Project. For example, data from pump tests would demonstrate whether there is communication between the production zone and the underlying or overlying aquifers. Data that shows a connection between the production zone and underlying aquifers and that migration of the injected fluids beyond the ore body would not be assured, is significant data that impacts any assessment of the environmental impacts of the Project.

19. Revegetation. The SEIS makes several references to the reestablishment of native vegetation. However, the SEIS does not appear to assess revegetation for various vegetation types in various affected soil and under the various site conditions. There is no estimation of the time it would take to reestablish various percentages of pre-operational vegetation. There is no discussion of test plots to determine the best seed mixes, planting times, soil amenities, additional watering, and success rates over time. Revegetation, in some instances can take decades. There is no reference to the BLM regulations applicable to the re-establishment of pre-existing vegetation types. The final SEIS must correct these omissions.

20. The SEIS improperly relies on assumptions related to the issuance of other South Dakota and EPA permits and approvals. The SEIS should not rely on permits that have not yet been approved or, in the case of the NPDES Permit, not been applied for.

21. The SEIS improperly relies on assumptions of Licensee compliance with all of the applicable NRC license conditions, statements and commitments made in the Application documents, state and federal regulatory requirements, best management practices, and other appropriate policies and guidance. Given the history of uranium recovery and NRC oversight over conventional and ISL uranium recovery operations, these are not well

founded assumptions. The SEIS fails to assess the distinct possibility that the Licensee will circumvent or fail to comply with one or more applicable regulatory requirements by intent or for other reasons.

22. The SEIS does not specifically identify the impacts of the proposed operation on BLM lands, nor reflect a consideration of BLM statutes and regulations applicable to the Plan of Operations submitted to the BLM for their review. Therefore, it does not serve as a NEPA document for the Dewey-Burdock Plan of Operations on BLM land.

23. The SEIS was an unnecessarily lengthy document, which much redundant information. It would have been better if all information regarding impacts related to each of the waste disposal alternatives were in the same section, rather than spread out in several sections.

24. The NRC did not provide sufficient time for public review and comment of such a lengthy and complex Application and draft SEIS. Therefore, UW reserves the right to submit additional comments for the NRC staff's consideration.

Thank you for providing this opportunity to comment.

Respectfully submitted,

/s/

Sarah M. Fields
Program Manager
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