



# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Matthew H. Mead, Governor

Todd Parfitt, Director

March 5, 2013

Mr. Andrew Persinko, Deputy Director  
Decommissioning and Uranium recovery Licensing Directorate  
US Nuclear Regulatory Commission, C/O Document Control Desk  
Two Flint North  
11545 Rockville Pike, Mail Stop T-8F5  
Rockville, MD 20855-2738

RE: Bear Creek Site, Title II-008

NRC's December 11, 2012, letter: *Response to comments on the draft environmental assessment related to the issuance of a license amendment to the Anadarko Petroleum Corporation Bear Creek Uranium Company Mill Site* (submitted by WDEQ letter dated June 5, 2012).

Dear Mr. Persinko:

The Wyoming Department of Environmental Quality (WDEQ), Water Quality Division, Groundwater Pollution Control (GPC) Program has reviewed the above referenced NRC letter.

The NRC's letter states that *"several of your comments from the Water Quality Division question whether Federal or State of Wyoming ground water quality standards should be met at the Point of Exposure (POE) wells located at the boundary of the Bear Creek property or for any ground water that flows off the property. The answer to these questions depends on whether a non-agreement State has jurisdiction over the non-radiological hazards associated with 11e.(2) byproduct material."*

The NRC's letter continues by stating that *"the Commission resolved this issue in SRM-SECY-99-0277, dated August 11, 2000:*

*The Commission has disapproved the staff's recommendation to formally adopt the current staff practice of acknowledging the concurrent jurisdiction of non-Agreement States over the non-radiological hazards of 11e.(2) byproduct material. The Commission has determined that NRC has exclusive jurisdiction over both the radiological and non-radiological hazards of such material. The staff should ensure that all affected states are aware of this.*

*The exclusive jurisdiction of NRC over 11e(2) byproduct material extends to any potential plume of ground water extending off the property."*

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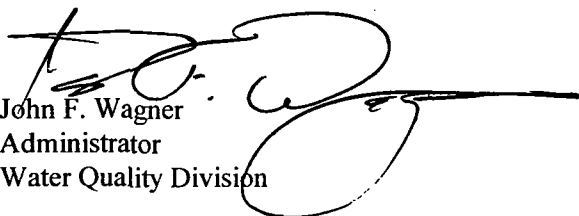
The NRC is reminded that questions of jurisdiction over the State of Wyoming's waters are long-standing. Regardless of any unilateral internal determination made by the Commission, the WDEQ has statutory responsibility to protect and, where necessary, to restore the quality of groundwater for all existing and potential uses, and the Wyoming State Engineer's Office has statutory responsibility to control and appropriate groundwater for all beneficial uses. Written communications from me dated June 21, 2006, and Mr. John Cora (former WDEQ Director) and Mr. Patrick Tyrell (Wyoming State Engineer) dated February 19, 2003, concerning the Western Nuclear, Inc., Split Rock mill tailings site dealt pointedly with groundwater-related jurisdictional issues between the NRC and the State of Wyoming.

Despite the NRC's claim that "The exclusive jurisdiction of NRC over 11e.(2) byproduct extends to any potential plume of groundwater flowing off the property", NRC is advised that the WDEQ expects NRC to control its contaminant plume and holds NRC responsible for any groundwater contaminant plume for which it has jurisdiction that flows off the property. Wyoming's groundwater protection standards that apply to contaminants in any contaminant plume flowing off the property are equivalent to federal Maximum Contaminant Levels (MCLs) as established under the Safe Drinking Water Act, and the numeric and narrative groundwater standards established in Water Quality Rules and Regulations, Chapter 8, or baseline concentrations where they exceed the MCL or state standard. These standards apply to all groundwater in the subsurface external to the NRC's control boundary, including water in the vadose zone.

WDEQ will consider the exceedance of any State of Wyoming groundwater protection standards by NRC's plume as it migrates beyond the property as a violation of state rules and regulations and will proceed to enforce those rules and regulations accordingly.

You may contact Deborah Harris with the Water Quality Division at (307)335-6980 if you have any questions regarding this letter.

Sincerely,



John F. Wagner  
Administrator  
Water Quality Division

JFW/KDF/DH/rm/13-0213

cc: Mr. Thomas McLaughlin, M.S. T8F5, 11545 Rockville Pike, Rockville MD 20852  
Ms. Nancy Nuttbrock, Administrator, Land Quality Division  
Mr. Kevin Frederick, Groundwater Section Manager, WQD Cheyenne  
Mr. Mark Moxley, Land Quality Manager, Lander  
Mr. Steve Ingle, Land Quality Division, Cheyenne  
Ms. Deborah Harris, District Supervisor, Lander  
File (2): Bear Creek Title II site, Converse County, Title II-008 / Chron