



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

July 9, 2013

EA 13-074

Ms. Donna L. Wichers, President
Uranium One USA, Inc.
907 North Poplar Street, Suite 260
Casper, Wyoming 82601

SUBJECT: RESPONSE TO DISPUTED NOTICE OF VIOLATION – NRC INSPECTION
REPORT 040-08502/13-001

Dear Ms. Wichers:

On March 28, 2013, Mr. Bill Kearney, former Uranium One USA, Inc. Vice President, provided a response to the Notice of Violation that was cited in U.S. Nuclear Regulatory Commission (NRC) Inspection Report 040-08502/13-001. The inspection report was issued on March 1, 2013 (ML13063A408) concerning activities conducted at your Willow Creek facilities in Johnson and Campbell Counties, Wyoming. Specifically, Mr. Kearney's letter stated that Uranium One is disputing Violation 040-08502/1301-02, a Severity Level IV violation, related to your failure to decommission two mine units within 24 months and failure to request an alternate decommissioning schedule in accordance with Title 10 of the Code of Federal Regulations (CFR) 40.42(h)(1) and 10 CFR 40.42(i).

By letter dated April 12, 2013 (ML13102A244), the NRC acknowledged Mr. Kearney's letter and informed Uranium One that the NRC would review your dispute of the violation. We have since completed our review and concluded that the violation is substantiated and occurred as cited in the Notice of Violation. A detailed response to Uranium One's comments, as presented in Mr. Kearney's March 28, 2013, letter to the NRC (ML13091A082), is provided in the enclosure to this letter.

In summary, the decommissioning timeliness rule contained in 10 CFR 40.42 has been determined to clearly apply to in-situ leach uranium recovery (ISR) facilities, including its efforts related to decommissioning of mine units and facilities, including evaporation ponds, land application areas, and other similar areas (see Section 2.4 of NUREG-1757, Volume 3). Once an ISR licensee decides to terminate the principal activity of uranium recovery in a particular wellfield, restoration of that wellfield is subject to the timeliness requirement, even though licensed activities may continue to be conducted in other wellfields. Cessation of lixiviant injection would signify a licensee's intent to shift from the principal activity of uranium production to the initiation of groundwater restoration. NRC staff recognizes that, in many cases, groundwater restoration may take longer than two years to complete in a given wellfield. To that end, 10 CFR 40.42(i) provides licensees an alternative avenue for compliance with decommission timeliness requirements by allowing licensees to seek approval from the NRC for an alternative decommissioning schedule for mine units, where timeframes for restoration of groundwater, surface decommissioning, or other considerations may

prevent the licensee from meeting the 24-months period for decommissioning the mine unit. Because Uranium One neither complied with the timeliness requirements set forth in 10 CFR 40.42(h)(1), nor sought approval for an alternative decommissioning schedule in accordance with 10 CFR 40.42(i), the NRC finds that Violation 040-08502/1301-02 is substantiated.

The NRC Enforcement Policy provides for a Severity Level III violation for a decommissioning violation such as the one identified in the NRC's March 1, 2013 inspection report. In dispositioning this violation as a Severity Level IV violation rather than as a Severity Level III violation as provided for in the Enforcement Policy, the NRC has taken into account the specific circumstances of this case. Because the NRC has substantiated this violation, you are required to respond to the original Notice of Violation dated March 1, 2013, within 30 days of the date of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response to the Notice of Violation will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, information so that it can be made available to the Public without redaction.

Should you have any questions concerning this letter, please contact Ms. Linda Gersey at 817-200-1299 or D. Blair Spitzberg, Chief, Repository and Spent Fuel Safety Branch, at 817-200-1191.

Sincerely,

/RA/

Anton Vogel, Director
Division of Nuclear Materials Safety

Docket: 040-08502
License: SUA-1341

Enclosure:
Detailed NRC Response to Licensee's Comments

cc w/encl: Scott W. Ramsay, Radiological Services Supervisor,
Wyoming Office of Homeland Security

Kevin Frederick, Administrator,
Wyoming Department of Environmental Quality/ Water Quality Division

Nancy Nuttbrock, Administrator
Wyoming Department of Environmental Quality/ Land Quality Division

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Letter to Donna L. Wichers from Anton Vogel dated July 9, 2013

SUBJECT: RESPONSE TO DISPUTED NOTICE OF VIOLATION – NRC INSPECTION
REPORT 040-08502/13-001

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M. Herrera, Fee Coordinator, DRMA
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Detailed NRC Response to Licensee's Comments

The following are Uranium One's comments, as presented in its March 28, 2013, letter to the U.S. Nuclear Regulatory Commission (NRC) (ML13091A082) and the NRC's responses to these comments:

1. Uranium One states, "Uranium One completed the purchase of Cogema Mining, Inc. (Cogema) and the Willow Creek Project on January 25, 2010."

The NRC staff agrees with this date. Therefore, Uranium One has been responsible for compliance with all applicable regulations, including 10 CFR 40.42, at the site since January 25, 2010 (see ML100270027).

2. Uranium One states, "Uranium One expended considerable efforts in 2010 and 2011 to convert the Willow Creek Project from a "stand-by" operation back into a uranium production operation. In fact, the NRC also expended considerable efforts assisting Uranium One in achieving this change in operational status, as evidenced by the NRC pre-operation inspections and numerous submittals Uranium One was required [to] make to the NRC. Accordingly, Uranium One did not immediately continue with the decommissioning activities at Irigaray Mine Units 8 and 9 that had been commenced by Cogema due to equipment and manpower constraints to bring the facilities back into operations mode."

Uranium One assumed responsibility for compliance with 10 CFR 40.42 upon completion of the purchase of Cogema Mining, Inc., on January 25, 2010. Irigaray Mine Units 8 and 9 were in decommissioning status at the time of the purchase. If Uranium One believed itself unable to meet the timeliness requirements in 10 CFR 40.42(h)(1) for the reasons described in its response, it could have sought an alternative decommissioning schedule under 10 CFR 40.42(i).

3. Uranium One states, "Uranium One plans to eventually continue uranium recovery at the Irigaray area to the south of Mine Units 8 and 9, and the existing pipeline facilities in these areas require evaluation for potential future use."

As indicated in annual reports covering three separate years (dated August 18, 2010, September 16, 2011, and September 2012) Uranium One was aware of the decommissioning status of Irigaray Mine Units 8 and 9 from the date it purchased the Willow Creek Project on January 25, 2010. Uranium One has had from the date of purchase to evaluate the existing pipeline facilities in these areas for potential future use and request an alternate schedule for decommissioning of specific pipeline infrastructure it may reuse.

4. Uranium One states, "The decommissioning plan governing this area and submitted by Cogema on December 19, 2000 was approved by NRC as Amendment 6 on December 31, 2001 and activities have occurred intermittently since then."

The NRC approved wellfield groundwater restoration for the Irigaray Mine Units 1 through 9 on September 20, 2006. This is the date after which surface decommissioning activities on Irigaray Mine Units 1 through 9 could begin. In the NRC's approval letter dated September 20, 2006, the NRC stated, "The NRC staff has completed its review of the groundwater restoration, stability, and monitoring information provided by COGEMA. The NRC staff concurs with the WDEQ that groundwater has been restored, as a whole, to its pre-mining class of use. Although the licensee has not met the NRC primary or background

Enclosure

restoration standards in LC 10.16, the NRC staff concludes that COGEMA has restored groundwater to the NRC secondary standards or pre-mining use category as required in license condition (LC) 10.16. *Therefore, with this approval, COGEMA can begin decommissioning wells in Irigaray Mine production units 1 through 9* [emphasis added].

As noted above, Uranium One assumed responsibility for compliance with 10 CFR 40.42 upon completion of the purchase of Cogema Mining, Inc., on January 25, 2010. Any failure by Cogema to comply with decommissioning timeliness requirements in 10 CFR 40.42 does not excuse Uranium One from compliance with NRC's regulations. Because decommissioning activities were authorized by NRC in 2006 and Irigaray Mine Units 8 and 9 were in decommissioning status at the time of the purchase by Uranium One, Uranium One was required to meet the deadline for decommissioning set forth in 10 CFR 40.42(h)(1) or seek an alternative schedule for decommissioning. Uranium One states, "The status of activities at these areas was conveyed to NRC in previous Annual Reports, including the 2009 report submitted by Cogema and the 2010, 2011, and 2012 reports submitted by Uranium One."

According to the document "Uranium One - Irigaray and Christensen Ranch Projects – 'Annual Report – [WDEQ] Permit to Mine No. 478 - August 19, 2009 through August 18, 2010,' (ML102450550)," dated August 18, 2010, Uranium One states:

6. RECLAMATION & RESTORATION PLANS - NEXT REPORT PERIOD:

Irigaray Surface Reclamation: In Production Units 8 through 9 the remaining buried piping will be removed. After all work is completed in the wellfields, associated roads and surfaces will be reclaimed. Final surface gamma surveys will be completed prior to topsoil placement and final reclamation.

In the document "Annual Report – [WDEQ] Permit to Mine No. 478 - August 19, 2010 through August 18, 2011" (ML120100010), dated September 16, 2011, the statement made in the previous Annual Report above is repeated.

In the document "Uranium One USA, Inc. Willow Creek Project Irigaray and Christensen Ranch Annual Report, WDEQ Permit to Mine No. 478, August 19, 2011 - August 18, 2012," (ML12285A174), dated September 2012, Uranium One states:

6. RECLAMATION & RESTORATION PLANS - NEXT REPORT PERIOD:

Irigaray Surface Reclamation: In Production Units 8 through 9, the remaining buried piping will be removed, and all associated roads and surfaces will be reclaimed. Final surface gamma surveys will be completed prior to topsoil placement and final reclamation.

The NRC staff agrees that the status of the Irigaray surface reclamation was conveyed in the last three annual reports. Based on the statements made by Uranium One in three successive annual reports, while it stated decommissioning activities were to be taken, none were taken for three reporting cycles, or three years. Nevertheless, Uranium One was still required to comply with the NRC's decommissioning timeliness regulations as set forth in 10 CFR 40.42.

5. Uranium One states, "The relatively minor amount of decommissioning activities remaining in Mine Units 8 and 9 is covered in the existing financial assurance cost estimate."

The NRC staff agrees with this statement. However, it has no bearing on compliance with the regulation governing timeliness in decommissioning.

6. Uranium One states, "The 24 month period envisioned in 10 CFR § 40.42 does not appear to be relevant considering the 13 year time span since decommissioning was submitted and the 12 year time span since the decommissioning plan was approved by NRC."

The Irigaray and Christensen Ranch Decommissioning Plan dated 06-15-2001 (ML011700655) states in part:

11.0 DECOMMISSIONING SCHEDULE AND COST ESTIMATE

A preliminary schedule for the accomplishment of the decommissioning and reclamation of the Irigaray Project and Christensen Ranch Project is shown in Figure 11-1. Meeting this schedule is highly dependent upon the pace of groundwater restoration and receiving various regulatory approvals. As of this writing, groundwater restoration at the Irigaray Project is ongoing in two Production Units (#6 and 7) out of a total of nine. Restoration has been completed in the other seven Production Units. *Completion of groundwater restoration at Irigaray is projected for late 2001, with wellfield decommissioning and surface reclamation to follow* [emphasis added]. Decommissioning of most plant facilities will commence in 2003, but will not be completed until groundwater restoration is finished at the Christensen Ranch Project and all recovered uranium is processed.

The NRC staff notes that restoration approval for all Irigaray wellfields was granted in 2006. The decommissioning plan is primarily a methodology for decommissioning, but does contain a schedule in Section 11.0. Section 11.0 shows completion of Irigaray surface reclamation by 2004. However, the key element in this schedule is that the licensee shows surface decommissioning being completed within two years of groundwater regulatory approval in Mine Units 8 and 9 (see decommissioning plan figure 11-1 in ML011700655). Regulatory approval of groundwater restoration was granted September 20, 2006.

Further, as already stated, Uranium One assumed responsibility for compliance with 10 CFR 40.42 upon completion of the purchase of Cogema Mining, Inc., on January 25, 2010. Any failure by Cogema to comply with decommissioning timeliness requirements in 10 CFR 40.42 does not excuse Uranium One from compliance with NRC's regulations. Because decommissioning activities were authorized by NRC in 2006 and Irigaray Mine Units 8 and 9 were in decommissioning status at the time of the purchase by Uranium One, Uranium One was required to meet the deadline for decommissioning set forth in 10 CFR 40.42(h)(1). If Uranium One believed it could not meet the regulatory deadline, it could have sought an alternative schedule for decommissioning.

7. Uranium One states, "this violation is not warranted in this matter because of the impracticability of applying Part 40.42 to decommissioning of an ISR wellfield. The NRC Staff has stated on numerous occasions that "decommissioning" of an ISR wellfield for purposes of Part 40.42 includes all phases of groundwater restoration, including stabilization monitoring (which requires four consecutive quarters of sampling and analysis), removal of pipes, plugging and abandonment of wells, etc.). Based on this interpretation, an ISR operator

typically only has between 12 and 14 months to complete the "groundwater restoration" phase of "decommissioning" under Part 40.42. As the NRC Staff has said in past requests for additional information (RAI), existing technical evidence demonstrates that it is not practicable to complete just the groundwater restoration component of decommissioning in 24 months, much less 12 to 14 months" [footnote omitted].

Guidance provided in NUREG-1757, Volume 3, Section 2.4, states in part, that the NRC staff recognizes that, in many cases, groundwater restoration may take several years or more to complete in a given wellfield. Further, 10 CFR 40.42(i) provides licensees an alternative avenue for compliance with decommission timeliness requirements by allowing licensees to seek approval from the NRC for an alternative decommissioning schedule for mine units, where timeframes for restoration of groundwater, surface decommissioning, or other considerations may prevent the licensee from meeting the 24-months period for decommissioning the mine unit.

8. Uranium One states, "Therefore, it is not practicable to strictly apply Part 40.42 timeliness in decommissioning requirements to ISR wellfields. This is consistent with federal courts' interpretation that regulations or regulatory interpretations with which it is impossible to comply are, on their face, invalid. See e.g., *Continental Bank v. United States*, 517 F. Supp 918 (E.D. Pa, 1981), *aff'd without opinion* 688 F.2d 819 (3d Cir. 1982) (holding that Department of the Treasury regulations that are impossible to comply with are invalid)."

The NRC regulations allow for licensees to delay decommissioning, under 10 CFR 40.42(i), by requesting an alternate decommissioning schedule when it is not technically feasible to complete decommissioning within the allotted 24 month period.

Other reference of note: NRC letter dated July 7, 2008, addressed to Cogema Mining, the former licensee for license docket 040-08502, SUBJECT: COMPLIANCE WITH 10 CFR 40.42'S TIMELY DECOMMISSIONING REQUIREMENTS (ML081490589).