

July 21, 2014

Mr. Jon Winter
Manager, Wyoming Environmental
and Regulatory Affairs
Uranium One Americas, Inc.
907 N. Poplar Street, Suite 260
Casper, WY 82601

SUBJECT: URANIUM ONE, USA, INC., WILLOW CREEK PROJECT, CAMPBELL AND
JOHNSON COUNTIES, WYOMING, SOURCE MATERIALS LICENSE SUA-
1341, ANNUAL SURETY ESTIMATE ADJUSTMENT (TAC NO. J00714)

Dear Mr. Winter:

The U.S. Nuclear Regulatory Commission (NRC) received the Uranium One, USA, Inc. (Uranium One), Willow Creek Project, Irigaray and Christensen Ranch Annual Report dated August 22, 2013. Contained within the report was the annual surety update for the Willow Creek Project. The original report from Uranium One contained a compact disk (CD) that was not compatible with NRC's Agencywide Documents Access and Management System (ADAMS). Uranium One resubmitted the CD and the report was made publicly available in the NRC's ADAMS on November 5, 2013, and can be found at ML13309B278. NRC staff acknowledged receipt of the surety update on November 8, 2013, and accepted the report for review on January 2, 2014.

The financial assurance update seeks to decrease the financial assurance amount for the Willow Creek Project to a total of \$20,363,482 from the currently approved amount of \$21,075,000. This decrease is primarily due to suspended future wellfield development at Willow Creek due to the low market price of uranium.

The NRC staff has reviewed the financial assurance update in accordance with License Condition 9.5, consistent with Criterion 9 of Appendix A to Part 40 of Title 10 of the Code of Federal Regulations (10 CFR Part 40, Appendix A). Based on this review, staff has reasonable assurance that the current financial assurance estimate of \$20,363,482 will be adequate to complete groundwater restoration and decommissioning activities at the facility.

Uranium One's current financial assurance instrument is an irrevocable letter of credit held in favor of the State of Wyoming. However, Uranium One does not have a standby trust agreement (STA) in place at this time as required by 10 CFR Part 40, Appendix A, Criterion 9. The NRC staff is currently in the process of evaluating whether the State of Wyoming's separate account provision for financial assurance instruments is consistent with the NRC's STA requirement. Therefore, in accordance with 10 CFR 40.14(a), NRC has, upon its own initiative, elected to grant an exemption to the STA requirements in 10 CFR Part 40, Appendix A, Criterion 9, for the current financial assurance arrangements for the Willow Creek Project until the 2016 review cycle.

J. Winter

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The NRC staff's review is documented in the enclosed Safety Evaluation Report (SER) (Enclosure 1). The SER concludes that sufficient information is available to support the reasonable assurance finding by the staff. License Amendment No. 2 is also enclosed (Enclosure 2).

This licensing action meets the categorical exclusion provisions in 10 CFR Part 51.22(c)(10)(i) and 10 CFR 51.22(c)(25)(vi)(H). Therefore, no further environmental review is required for this action.

If you have any questions regarding this action, please contact Mr. Ron Linton, the Project Manager for Source Material License SUA-1341, at 301-415-7777, or by e-mail at ron.linton@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Andrew Persinko, 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

Docket No.: 040-08502
License No.: SUA-1341

Enclosures:

1. Safety Evaluation Report
2. Amendment No. 2 to License SUA-1341

cc: Luke McMahan, PG. (WDEQ)

J. Winter

2

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**SAFETY EVALUATION REPORT
2013-2014 FINANCIAL ASSURANCE UPDATE FOR THE WILLOW CREEK PROJECT,
JOHNSON AND CAMPBELL COUNTIES, WYOMING**

DATE: July 21, 2014

DOCKET: 04008502

LICENSE NO.: SUA -1341

LICENSEE: URANIUM ONE USA, INC.

SITE: Willow Creek Project, Irigaray and Christensen Ranch Facilities

PROJECT MANAGER: Ron Linton

TECHNICAL REVIEWER: Reginald Augustus

SUBJECT: Willow Creek Project Annual Surety Update

BACKGROUND

By License Condition 9.5, Uranium One USA, Inc. (Uranium One) is required to submit to the U.S. Nuclear Regulatory Commission (NRC), for review and approval, annual updates of the financial surety to cover third-party costs for decommissioning and decontamination at the Willow Creek Project, Irigaray and Christensen Ranch facilities in Wyoming. On August 22, 2013, Uranium One submitted to the NRC, for review and approval, its Willow Creek Project, Irigaray and Christensen Ranch Annual Report (August 19, 2012 – August 18, 2013). The original report from Uranium One contained a compact disk (CD) that was not compatible with NRC's Agencywide Documents Access and Management System (ADAMS). Uranium One resubmitted the CD and the report was made publicly available in the NRC's ADAMS on November 5, 2013, and can be found at ML13309B278. The NRC staff acknowledged receipt of the surety update on November 8, 2013, and accepted the report for review on January 2, 2014. Staff from the NRC Special Projects Branch (SPB) in the Office of Federal and State Materials and Environmental Management Programs was requested to provide technical assistance for the review of the annual surety update. Specifically, the NRC SPB staff was requested to review the sufficiency of the cost estimate and appropriateness of the instrument used to maintain the surety. This Safety Evaluation Report documents the results of NRC SPB staff's review of the annual surety update.

REGULATORY REQUIREMENTS

The NRC staff reviewed Uranium One's Willow Creek Project surety update in accordance with requirements in 10 CFR Part 40, Appendix A, Criterion 9, "Financial Criteria" and in License Condition 9.5 of Materials License SUA-1341. The NRC staff used NUREG-1569, "Standard Review Plan for In Situ Leach Uranium Extraction License Applications" (SRP) as guidance in determining elements to be included in a surety review. Specifically, staff used the review procedures and acceptance criteria in Section 6.5, and guidance in Appendix C of the SRP.

The NRC staff used Wyoming Department of Environmental Quality (WDEQ) Land Quality Division Guideline 12 "Standardized Reclamation Performance Bond Format and Cost Calculation Methods" (Guideline 12) when applicable, to verify that reasonable unit costs were included in the surety calculations.

DISCUSSION

Sufficiency of the Cost Estimate

In the surety calculations, the licensee includes costs for decommissioning and decontamination, reclamation of sites, structures, and equipment used in conjunction with facilities operation. The staff finds that the licensee used either guidance consistent with WDEQ Guideline 12 (when applicable) or actual costs in the development of the cost estimate.

Uranium One estimates the cost to decommission and decontaminate the Willow Creek Project facilities by an independent party at \$20,489,002 for WDEQ and \$20,363,482 for NRC's portion. This constitutes decreases in the cost estimates for WDEQ and NRC of \$585,998 and \$711,518, respectively, from the current cost estimate covered by the current Irrevocable Letter of Credit (LOC) issued in favor of WDEQ of \$21,075,000. Uranium One has suspended future development at the Willow Creek Project due to the low market price of uranium. The changes to the cost estimate are generally due to updating of current operating costs or revisions to reflect current development plans. The NRC staff finds that the cost estimate is based on costs of a third party contractor, does not take credit for any salvage value and includes a 15 percent contingency factor. The cost estimate includes the following items:

- Worksheet 1: Groundwater Restoration
The wellfield area and number of wells for Christensen Ranch (CR) mine unit (MU) 10 and CR MU 11 has been adjusted to reflect actual conditions and development plans (Decrease of \$38,939 from prior-year submittal).
- Worksheet 2: Plant Equipment Removal and Disposal
Uranium One planned to add an additional nine wellfield module buildings in the 2012-2013 operating period. However, only six were constructed in MU10 and none in CR MU 11. The volume has been adjusted and continues to include reclamation costs for two additional module buildings in CR MU 10 (Decrease of \$502 from prior-year submittal).
- Worksheet 3: Building Demolition and Disposal
Uranium One planned to add an additional nine wellfield module buildings in the 2012-2013 operating period. However, only six were constructed in CR MU 10 and none in CR MU 11. The volume has been adjusted and continues to include reclamation costs for two additional module buildings in CR MU 10. Uranium One constructed a bicarbonate building and a manifold building (Increase of \$74,703 from prior-year submittal).

- Worksheet 4: Pond Reclamation Cost
Costs to reline Pond A and Pond C at the Irigaray facility during the 2012-2013 reporting period were removed from the surety because they were not performed and will not be performed in the 2013-2014 reporting period. Costs for a leak detection system removal and 11(e).2 byproduct disposal for pond CR -2 have been added (Decrease of \$409,092 from prior-year submittal).
- Worksheet 5: Well Plugging and Abandonment
The number of wells for CR MU 10 has been increased to reflect the actual number of wells installed during the 2012-2013 reporting period, and the possible development of Modules CR 10-7 and 10-8 (Increase of \$32,817 from prior-year submittal).
- Worksheet 6: Wellfield Equipment Removal & Disposal
The number of wells and amount of piping in CR MU 10 and CR MU 11 has been revised to reflect actual numbers and plans. The number of production well pumps has been revised to reflect the current number for CR MU 10, and the projected number for MU 11 has been revised. The quantity of trunkline for CR MU 10 and CR MU 11 has been revised to reflect the actual footage and the possible development of Modules CR 10-7 and 10-8. The number of manholes for CR MU 10 and CR MU 11 has been changed to reflect the actual number and the possible additional development of CR MU 10 (Decrease of \$90,724 from prior-year submittal).
- Worksheet 7: Topsoil Replacement & Revegetation
Revision to reflect no wellfield development planned for CR MU 11 during the 2013-2014 reporting period (Increase of \$30,311 from prior-year submittal).
- Worksheet 8: Miscellaneous Reclamation
Cost for CR MU 10 and 11 have been adjusted to reflect actual numbers and to reflect no wellfield development in 2013-2014 respectively (Decrease of \$2,672 from prior-year submittal).

The NRC staff has completed its review of the surety update estimate for Uranium One's Willow Creek Project, Irigaray and Christensen Ranch facilities, and finds that the licensee has included in the update, all activities listed in the reclamation plan or in Sections 6.1-6.4 of the standard review plan in NUREG-1569, that are to be conducted during the period covered by the update. The NRC staff finds the licensee has based the assumptions for the financial surety analysis on site conditions, including experiences with generally accepted industry practices, and research and development at the site.

The NRC staff finds the values used in the financial surety update are based on current dollars and reasonable costs for the required reclamation activities are defined. Therefore, the NRC staff finds that the licensee has established an acceptable financial assurance cost estimate based on the requirements in 10 CFR Part 40, Appendix A, Criterion 9.

Appropriateness of the Financial Instrument

Currently the licensee uses an irrevocable letter of credit to satisfy its financial assurance requirements. Pursuant to Criterion 9(d), the NRC,

[M]ay accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements for other Federal or state agencies and/or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

In accordance with this criterion, Uranium One has consolidated the NRC's financial surety with the financial surety required by the State of Wyoming. As the financial instrument is in favor of WDEQ the original copy of the financial instrument remains with WDEQ based on an agreement between the State and the NRC. The NRC maintains a copy of the instrument on file as well. Uranium One will continue to use an irrevocable LOC to satisfy its financial assurance obligations in the amount provided for in this update. The NRC will obtain a copy of the instrument from WDEQ once the LOC has been updated to reflect the new lower amount. Once the cost estimate is approved, the LOC will be issued in favor of WDEQ for an amount equal to or greater than NRC's portion of \$20,363,482. This figure will likely be approximately \$20,489,002, based on the current WDEQ estimate that requires separate WDEQ approval.

As of December 17, 2012, NRC uranium recovery licensees that do not use a trust fund to satisfy their financial assurance obligations are required to have a standby trust agreement (STA) in place, pursuant to 10 CFR Part 40, Appendix A, Criterion 9, which states, "[i]f a trust is not used, then a standby trust fund must be set up to receive funds in the event the Commission or State regulatory agency exercises its right to collect the surety." The purpose of an STA is to provide a separate account to hold decommissioning funds in the event of a default. The STA requirement for uranium recovery licensees is a new requirement. Criterion 9 of 10 CFR Part 40, Appendix A, was revised as part of the Decommissioning Planning Rule (76 FR 35512; June 17, 2011). An STA had already been required for other NRC licensees under 10 CFR 40.36(e)(2)(ii) prior to December 17, 2012. In the Decommissioning Planning Rule, the NRC noted that the revision to Criterion 9 "[c]odifies certain aspects of existing regulatory guidance to improve the quality of the [Decommissioning Funding Plan] and applies NRC experience to increase the likelihood that adequate funds will be available when needed to complete the decommissioning process. . . . This final rule required all reactor and materials licensees who use these guarantee mechanisms to establish a standby trust fund to receive the guaranteed financial assurance amount should that amount become immediately due and payable." 76 FR at 35515. Absent a pre-existing STA, if financial assurance funds became unexpectedly available, the NRC would be unable to accept such funds. For example, if an NRC licensee's bond was forfeited and an STA was not set up to receive those funds, the funds would have to be deposited into the U.S. Treasury and be appropriated back to NRC by Congress before their decommissioning use. With an STA, the funds are deposited into the STA with specific

guidelines as to how they can be administered by the trustee for their immediate decommissioning use.¹

Currently, Uranium One uses an irrevocable LOC to provide its financial assurance. At this time, Uranium One does not have an STA in place, nor has it requested an exemption from the requirement to do so. However, the NRC has the discretion under 10 CFR 40.14(a), to grant an exemption from the requirements of a regulation in 10 CFR Part 40 on its own initiative, if it determines the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Wyoming law requires that a separate account be set up to receive forfeited decommissioning funds, but does not specifically require a STA. Section 35-11-424(a) of the Code of Wyoming states “[a]ll forfeitures collected under the provisions of this act shall be deposited with the State treasurer in a separate account for reclamation purposes.” Pursuant to WDEQ financial assurance requirements, WDEQ holds permit bonds in a fiduciary fund called an agency fund. If a bond is forfeited, the forfeited funds are moved to a special revenue account. Although the special revenue account is not an STA, the special revenue account serves a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for reclamation [decommissioning] purposes.

NRC has elected to grant Uranium One an exemption from the STA requirements in 10 CFR Part 40, Appendix A, Criterion 9, for the current surety arrangement until the 2016 review cycle to allow the NRC staff an opportunity to evaluate whether the separate account required by the State of Wyoming would satisfy the NRC’s requirement for a standby trust agreement. This exemption will expire on December 31, 2016, for the Willow Creek Project. At that time, Uranium One will be required to ensure that its financial assurance arrangement includes an STA to receive decommissioning funds, even if this results in Uranium One having to obtain a separate financial surety for the NRC. NRC staff’s discussion of its reasons for granting the exemption follows below.

The Exemption is Authorized by Law.

The NRC staff concluded that the proposed exemption is authorized by law as 10 CFR 40.14(a) expressly allows for an exemption to the requirements of the regulation in 10 CFR Part 40, Appendix A, Criterion 9, and the proposed exemption will not be contrary to any provision of the Atomic Energy Act of 1954, as amended.

The Exemption Presents no Undue Risk to Public Health and Safety.

The exemption is related to the financial surety. The requirement that the licensee provide adequate financial assurance through an approved mechanism (e.g., a surety bond, irrevocable letter of credit) would remain unaffected by the exemption. Rather, the exemption would only pertain to the establishment of a dedicated trust in which funds could be deposited in the event that the financial assurance mechanism would be need to be liquidated. The regulations in 10

¹ See NUREG – 1757, Vol. 3, Rev. 1, for explicit details of an STA.

CFR Part 40, Appendix A, Criterion 9(d), allow for the financial or surety arrangements to be consolidated within a State's similar financial assurance instrument. NRC has determined that while the WDEQ does not require an STA, the special revenue account may serve a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for site-specific reclamation, i.e., decommissioning purposes. Because the licensee remains obligated to establish an adequate financial assurance mechanism for its licensed sites, and the NRC has approved such a mechanism, sufficient funds are available in the event that the site would need to be decommissioned. A temporary delay in establishing an STA does not impact the present availability and adequacy of the actual financial assurance mechanism. Therefore, the limited exemption being issued by the NRC herein presents no undue risk to public health and safety.

The Exemption is Consistent with the Common Defense and Security.

The proposed exemption will not involve or implicate the common defense or security. Therefore, granting the exemption will have no effect on the common defense and security.

The Exemption is in the Public Interest

The proposed exemption will enable the NRC staff to evaluate the State of Wyoming's separate account provision and the NRC's STA requirement to determine if they are comparable. The evaluation process will allow the NRC to determine whether the licensee's compliance with the state law provision will sufficiently address the NRC requirement as well, and therefore provide clarity on the implementation of the NRC regulation in this instance. Therefore, granting the exemption is in the public interest.

CONCLUSION

Based on the information provided in the application and the detailed review conducted of the surety estimate for Uranium One's Willow Creek Project, the NRC staff concludes that the current surety estimate includes funds sufficient to cover the estimated current costs of the facilities and the financial instrument is acceptable. The surety arrangement does not include an STA agreement required in 10 CFR Part 40, Appendix A, Criterion 9. However, NRC is granting a temporary exemption to the regulation that requires an STA for this surety arrangement.

For the reasons identified above, the NRC staff determined that Uranium One has provided adequate justification for the current financial assurance estimate at Willow Creek Project. Therefore, the NRC staff has reasonable assurance that the financial assurance estimate is sufficient and accepts Uranium One's estimate for the Willow Creek Project. The revised license condition is shown at the end of this Safety Evaluation Report.

ENVIRONMENTAL REVIEW

A license amendment to reflect an update in the amount of financial assurance or corrective revisions belongs to a category of actions which the NRC has determined do not individually or cumulatively have a significant effect on the environment. Such actions qualify for a categorical

exclusion under 10 CFR 51.22(c) and do not require an environmental assessment. Specifically, the NRC staff has determined that the financial assurance update is categorically excluded from further environmental review under 10 CFR 51.22(c)(10)(i). Likewise, the NRC staff has determined that the exemption from the requirement to have an STA in place is eligible for categorical exclusion under 10 CFR 51.22(c)(25)(vi)(H), which provides that an exemption from surety, insurance, or indemnification requirements is categorically excluded if the exemption would not result in any significant hazards consideration; change or increase in the amount of any offsite effluents; increase in individual or cumulative public or occupational radiation exposure; construction impacts; or increase in the potential for or consequence from radiological accidents. The staff finds that the STA exemption involves surety, insurance and/or indemnity requirements and that granting Uranium One this temporary exemption from the requirement of establishing a STA would not result in any significant hazards or increases in offsite effluents, radiation exposure, construction impacts, or potential radiological accidents. Therefore, an environmental assessment is not required.

PROPOSED LICENSE CONDITION

Uranium One submitted its annual surety update (ML13309B278) that estimated the NRC surety amount at \$20,363,482. The NRC staff agrees with Uranium One's updated NRC surety estimate of \$20,363,482 and directs that the surety for Materials License SUA-1341 be set at an amount no less than \$20,363,482.

The last paragraph of NRC Materials License SUA-1341, License Condition 9.5 will be changed to read:

- 9.5 The licensee's currently approved surety, Irrevocable Standby Letter of Credit issued in favor of the State of Wyoming, Department of Environmental Quality (WDEQ) shall be continuously maintained in an amount no less than \$20,363,482 for the purpose of complying with 10 CFR 40, Appendix A, Criterion 9, until a replacement is authorized by both the State of Wyoming and the NRC.