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January 30, 2018

To: Ms. Mary B. Spencer
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Office of the General Counsel
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11555 Rockville Pike
Rockville, MD 20852

Re: Wyoming Environmental Quality Act Application to Uranium Recovery Program

Dear Ms. Spencer,

The Wyoming Attorney General's Office received your letter of January 12, 2018 requesting clarification of the statutory provisions that apply to Wyoming's proposed Agreement program. Thank you for reaching out to our office. All of the state statutes, regulations, and policies that will apply to Wyoming's proposed Agreement program were included in the Final Agreement State Application submitted on November 14, 2017, and any questions about the Agreement program's authority should be resolved by reference to the Final Agreement State Application and any subsequent amendments. I hope that this letter will clarify the specific provisions of the Wyoming Environmental Quality Act (WEQA) that will apply to the proposed Agreement program.

Taken as a whole, Wyoming Statutes establish a state program that is adequate and compatible with the requirements of the Atomic Energy Act of 1954, as amended. Specifically, WEQA Article 20 authorizes the Wyoming Department of Environmental Quality (WDEQ) to administer a program that is adequate to control radiation hazards for the protection of public health and safety. Article 20 contains the substantive provisions of Wyoming's Agreement State program that will apply to milling activities. Other portions of the WEQA, such as Articles 1, 7,

and 9, provide procedural elements such as enforcement structures that ensure the proposed Agreement program is adequate.

The following provisions of the WEQA will apply to the Uranium Recovery Program when it issues licenses for the use of source material from recovery or milling and the created byproduct material:

- Wyoming Statute § 35-11-103(j) provides definitions of terms specific to the Uranium Recovery Program, including the terms “byproduct material,” “recovery or milling,” and “source material.”
- Wyoming Statute § 35-11-104 establishes the Wyoming Department of Environmental Quality (WDEQ) as an agency of state government.
- Wyoming Statute § 35-11-105 creates the Land Quality Division within WDEQ.
- Wyoming Statute § 35-11-108 authorizes the Director of WDEQ to appoint an Administrator for the Land Quality Division.
- Wyoming Statute § 35-11-109(a) authorizes the Director of WDEQ to “[p]erform any and all acts necessary to promulgate, administer and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or permits adopted, established or issued thereunder, and to exercise all incidental powers as necessary to carry out the purposes of this act[.]”
- Wyoming Statute § 35-11-109(a)(vi) authorizes the Director to designate representatives to enter and inspect properties on which air, water or land pollution sources are located or are being constructed.
- Wyoming Statute § 35-11-109(a)(vii) authorizes the Director to investigate violations of the act or its implementing regulations and to take enforcement action.
- Wyoming Statute § 35-11-109(a)(xiii) authorizes the Director to issue, deny, amend, suspend or revoke permits and licenses issued under the act.
- Wyoming Statute § 35-11-110(a)(v) authorizes the Administrator to oversee permitting programs within the Land Quality Division.
- Wyoming Statute § 35-11-115 provides the Director with the authority to issue emergency orders where air, water or land pollution creates an emergency requiring immediate action to protect human or animal health or safety.

- Wyoming Statute §§ 35-11-701(a) and 35-11-701(c)(i) authorize WDEQ to investigate potential violations, to issue notices of violation, and to issue cease and desist orders.
- Wyoming Statute § 35-11-901(a) allows WDEQ to seek penalties and/or injunctions for violations of the act.
- Wyoming Statute § 35-11-901(j) provides WDEQ with escalated enforcement authority to seek higher penalties and/or imprisonment of willful and knowing violators.
- Wyoming Statute § 35-11-2001 authorizes the Governor to negotiate an Agreement with the Nuclear Regulatory Commission and vests WDEQ with the authority to regulate “source material from recovery or milling and the byproduct materials generated[.]”
- Wyoming Statute § 35-11-2002(a) prohibits acquiring, owning, possessing, transferring, offering, or receiving for transport any source material from recovery or milling and the created byproduct material without a license issued by either WDEQ or the Commission.
- Wyoming Statute § 35-11-2002(b) authorizes WDEQ to promulgate rules and regulations for the Uranium Recovery Program.
- Wyoming Statute § 35-11-2002(c) allows WDEQ to incorporate requirements of Article 4 where they do not conflict with the provisions of Article 20.
- Wyoming Statute § 35-11-2003 authorizes WDEQ to issue licenses and includes the authority to impose license conditions, grant exemptions consistent with Commission requirements, require financial assurance, conduct enforcement actions, and seek injunctive relief and penalties.
- Wyoming Statute § 35-11-2004 prescribes procedures and requirements for license termination.

Other provisions of the WEQA will apply to WDEQ and the Uranium Recovery Program within WDEQ, but these provisions do not relate to the control of radiation hazards, and as such, they are not essential to Wyoming’s proposed Agreement program. For example, the provisions of Article 4 regulate mining-related activities but do not regulate milling activities or radiation protection. Although some provisions of Article 4 may apply to uranium mining, Article 4 is not intended to control radiation hazards and does not replace or supersede Article 20.

Even in a situation where both Article 4 and Article 20 apply to a mining and milling operation, the requirements of Article 20 take precedence. Wyoming Statute § 35-11-2002(c)

Letter to M. Spencer
January 30, 2018
Page 4

states “[t]o the extent it is not inconsistent with the provisions of this article, article 4 of this chapter shall apply to all licenses issued and actions taken under this article.” Because the provisions of Article 4 apply only where they are consistent with the provisions of Article 20, the existence of additional regulatory authority found in Article 4 does not create a conflict between Article 20 and Article 4. Wyoming Statute § 35-11-415 also specifically requires mining operators to comply with all provisions of the WEQA, including Article 20 and its implementing regulations. In a situation where more than one provision of the WEQA may apply, the more stringent requirements would be applicable and enforceable. Additionally, there are no apparent conflicts between Article 20 and any other provisions of the WEQA.

The State of Wyoming appreciates your time and consideration of this matter. I hope this letter will assist you in completing a timely review of Wyoming’s application for Agreement State status. Please do not hesitate to contact me if you require further clarification or information.

Sincerely,



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