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Sent: Thursday, May 27, 2021 4:05 PM
To: Waldron, Ashley
Cc: UNC-ChurchRockEIS Resource
Subject: [External_Sender] EPA's comments on the DEIS for the Disposal of Mine Waste at the UNC Mill Site in McKinley County, New Mexico
Attachments: 2021-05-27_EPA comments_DEIS_ChurchRock_20200223_signed.pdf

Dear Ashley,

Attached please find a pdf of EPA's comments on the DEIS for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico.

We appreciate the NRC's hard work on this project and the opportunity to provide feedback. Please contact me if you have any questions about our comments.

Regards,

Ann

Ann McPherson

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

May 27, 2021

Ashley Waldron
Environmental Project Manager
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Draft Environmental Impact Statement for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico (EIS No. 20200223)

Dear Ashley Waldron,

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for the Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico. Our review was completed pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The UNC has requested that the U.S. Nuclear Regulatory Commission amend its license (SUA-1475) for the tailings impoundment at the UNC Mill Site to allow for the disposal of mine waste from the Northeast Church Rock (NECR) Mine Site into a repository that would be constructed on top of the tailings impoundment at the UNC Mill Site. The NECR Mine Site, which is located on Navajo Nation land and land held by the United States in trust for the Navajo Nation, is a former uranium mine that was operated by UNC from 1967 to 1982. The UNC Mill Site, which is privately owned and situated less than one mile southeast of the NECR Mine Site, includes a uranium milling facility that operated from 1977-1982. The EPA has been involved with the cleanup of the NECR Mine Site since 2005 when the Navajo Nation requested that the EPA take the lead on addressing this site under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) authority. We have appreciated the ongoing cooperation and coordination between the NRC and the EPA on this project over the past decade.

In response to the license amendment request, the NRC has prepared: 1) a Safety Evaluation Report (SER) which documents the safety portion of the NRC staff's review of the license amendment; and 2) an EIS which addresses the environmental impacts of the proposed action in accordance with the NRC's NEPA implementation regulations. The proposed amendment would allow UNC to comply with an EPA remedial action planned for the NECR Mine Site to remove and transfer approximately 1,000,000 cubic yards of NECR mine waste to a repository on top of the tailings impoundment at the UNC Mill Site. This action is documented in EPA Region 6 and 9's 2011 Non-Time Critical Removal Action Memo for the NECR Mine Site and EPA Region 6's 2013 Record of Decision for the UNC Mill Site in compliance with CERCLA. The license amendment request also addresses several issues related to erosion protection design that were identified in 2002 including: 1) sedimentation in the branch swales and the north upstream diversion channel; 2) damage to the jetty located in the Pipeline Arroyo; and 3) differential settlement in the eastern part of the central cell of the existing tailings impoundment (SER, pg. 12).

Throughout the development of the Draft EIS, the EPA has appreciated the commitment of the NRC to work closely with the Navajo Nation, as well as state, tribal, and federal resource and regulatory agencies to address concerns and avoid and minimize impacts to environmental resources. We also appreciate the NRC joining monthly calls with the Red Water Pond Road Community Association Executive Committee members to speak directly to those most impacted by the project and explain the NRC process. The EPA provided scoping comments on April 18, 2019 and has been in regular communication with the NRC and the Navajo Nation. During the development of the Draft EIS, the EPA had the opportunity to provide early feedback which has resulted in the identification and resolution of potential EPA concerns with accurately describing the project and its CERCLA history. The EPA prepared detailed comments on the Administrative Draft EIS on August 3, 2020 and responded to follow-up questions from the NRC on August 27, 2020. We thank the NRC for addressing the concerns EPA highlighted during this review and appreciate the opportunity for early coordination. We provide the following recommendations for consideration in the preparation of the Final EIS.

Applicable or Relevant and Appropriate Requirements

The EPA has the authority under CERCLA to determine what federal, state, and tribal requirements are applicable and must be followed during the CERCLA cleanup action. These requirements are referred to as “applicable or relevant and appropriate requirements” (ARARs). The EPA implements only the substantive, not the procedural, requirements of those ARARs, pursuant to CERCLA Section 121 (e)(1). According to the Draft EIS (pg. 1-11), the complete list of the ARARs is provided in Table 1¹ of the 2013 ROD for the EPA’s CERCLA remedial action. However, Tables A-1 to A-3 of the 2011 Non-Time Critical Removal Action Memorandum, incorporated into the 2013 ROD, also include a list of ARARs applicable to the project. While the majority of the ARARs are the same, the tables are not identical.

Recommendation: For completeness, please reference Tables A-1, A-2, and A-3 of the 2011 Non-Time Critical Removal Action Memorandum – along with Table 1 of the 2013 Record of Decision – when referring to the complete list of ARARs in the Final EIS.

Clean Water Act Section 404

According to the Draft EIS, no determinations of waters of the United States (WOTUS), as defined by the 2020 regulatory definition, have been made; however, the NRC, under the 1986 regulatory definition, previously found WOTUS within the general region of the proposed project area (pg. 3-27). Under the Navigable Waters Protection Rule (NWPR), intermittent and perennial streams and their adjacent wetlands are jurisdictional if the streams flow to a Traditional Navigable Water in a typical year. According to the Draft EIS, UNC has agreed to comply with substantive Clean Water Act provisions and regulations (pg. 3-28), but it remains unclear whether jurisdictional waters are present.

Recommendation: To provide legal clarity, please clarify that in the absence of a jurisdictional determination consistent with the NWPR conducted and verified by the U.S. Army Corps of Engineers, the EPA will treat any waters and wetlands as if they are jurisdictional under the Clean Water Act and ensure that appropriate Best Management Practices are developed for any impacted portions to comply with the substantive requirements of the Clean Water Act.

¹ See Internet address: <https://semspub.epa.gov/work/06/681353.pdf>

Air Quality

The UNC has identified mitigation measures for each resource area, including air quality, in Table 6.3-1. Mitigation measures for air quality include the use of diesel construction equipment with tier 3 engines and conveyor belt generators with tier 4 engines (pg. 6-7).

Recommendation: Please include a mitigation measure that nonroad engines should be certified to be in compliance with the EPA Tier 4 regulations found at 40 CFR Parts 89 and 1039, which include new and in-use nonroad compression-ignition engines.

Hazardous Waste Generator Classifications

According to the Draft EIS, limited quantities of hazardous wastes (e.g., batteries and solvents from operating equipment and vehicle maintenance) are expected to be generated and would fall within state and federal guidelines applicable to Conditionally Exempt Small Quantity Generators. With the issuance of the Hazardous Waste Generator Improvement rules, hazardous waste generator classifications have changed. The term “Conditionally Exempt Small Quantity Generator” has changed to “very small quantity generators.”

Recommendation: Update the Final EIS to reflect the new nomenclature for hazardous waste generator classifications.

Quivira Mine Site Engineering Evaluation/Cost Analysis

The Draft EIS states that the EPA plans to complete an Engineering Evaluation/Cost Analysis (EE/CA) in 2020 to evaluate cleanup options for the Quivira Mine Site (pg. 3-80). We note that the EE/CA is now expected to be completed in 2021, as correctly noted on page 5-6. Similarly, the Draft EIS states that the EPA anticipates that the cleanup for Quivira would begin in 2022 (pgs. 5-6, 5-27, 5-42); however, cleanup is now expected to begin in 2023.

Recommendation: In the Final EIS, revise the text on pg. 3-80 to include the updated timeline for completion of the EE/CA for cleanup options at the Quivira Mine Site. Revise the text on pgs. 5-6, 5-27, and 5-42 to include the updated timeframe that EPA estimates for the start of Quivira cleanup construction.

Public Comments

According to the Draft EIS, some members of local Tribes have expressed that, while they want the mine waste moved off the NECR Mine Site, moving the mine waste to the UNC Mill Site is not an acceptable alternative to them (pg. 8-2). We note that this sentiment was also expressed during the public meetings held on December 2, 2020, December 9, 2020, and April 29, 2021.

As described in the Draft EIS (pg. 2-22), the EPA previously evaluated several alternatives for the removal of NECR mine waste including an in-depth analysis of both onsite and offsite disposal options discussed in the 2009 EE/CA. After receiving public comments suggesting additional disposal option locations, the EPA completed a subsequent evaluation² of 14 disposal sites. The three regulatory evaluation criteria the EPA uses for remedy selection in removal actions are effectiveness, implementability and cost. The 2009 EE/CA, which also went through a public comment process, concluded that disposal at a licensed disposal facility would increase the cost by a factor of almost seven

² See Internet Address: <https://semspub.epa.gov/work/09/2240730.pdf>

over disposal of the waste at the UNC Mill Site. The EPA selected the least expensive alternative that was protective, met all requirements in the National Oil and Hazardous Substances Pollution Contingency Plan, and removed waste from Tribal lands (2013 ROD, pgs. 65 & 99). The responsiveness summary to public comments on the 2009 EE/CA is included in the 2011 Non-Time Critical Removal Action Memorandum for NECR. These documents are available at <https://www.epa.gov/navajo-nation-uranium-cleanup/northeast-church-rock-mine>.

Recommendation: In the Final EIS, summarize the comments received in the public meetings in 2020 and 2021. Clearly illustrate the remedy selection process under CERCLA and clarify the role of the EPA.

We appreciate the opportunity to review this Draft EIS and are available to discuss our comments. When the Final EIS is released for public review, please provide a copy to Ann McPherson. If you have any questions, please contact me at (415) 947-4167 or prijatel.jean@epa.gov or Ann McPherson, the lead reviewer, at 415-972-3545 or mcperson.ann@epa.gov.

Sincerely,

JEAN PRIJATEL

Jean Prijatel
Manager, Environmental Review Branch

Digitally signed by JEAN
PRIJATEL
Date: 2021.05.27 11:52:20
-07'00'

cc via email: Valinda C. Shirley, Navajo Nation EPA
Robert Houston, EPA Region 6