

NRDC

June 10, 2021
Via Electronic Mail

Chair Christopher Hansen
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: NRC Commissioners

RE: NRDC, *et al.*, Request to NRC to Hold in Abeyance Rulemaking for Ground Water Protection at Uranium In Situ Recovery Facilities, Docket ID NRC-2008-0421.

Dear Chairman Hansen:

The Natural Resources Defense Council (NRDC), the New Mexico Environmental Law Center, Earth Works, Powder River Basin Resource Council, Earthjustice, Southwest Research & Information Center, Concerned Citizens for Nuclear Safety and the Grand Canyon Trust write collectively to request the Nuclear Regulatory Commission (NRC) cease all work on its ongoing ISL rulemaking until such time as the Environmental Protection Agency (EPA) has finalized its long overdue *In Situ Leach* (ISL) uranium rulemaking, (*Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings* (40 CFR Part 192)). And in furtherance of this, and as a first step, we request that you work together with the EPA to dissolve the July 23, 2020 *Memorandum of Understanding Concerning the Regulation of Uranium in situ Recovery Activities* (MOU), signed under the previous Administration.

By taking these two steps – (1) dissolving the MOU and (2) holding in abeyance action on your agency’s rulemaking until such time as the EPA can finalize its protective uranium standards – we can collectively start to hold a polluting industry accountable for its decades of harm to scarce sources of western groundwater and the vulnerable tribal and environmental justice communities that have suffered as a consequence.

The written legacy on this issue is voluminous and we see no need to reiterate all of it here, but we briefly summarize our reasons for urgently requesting that the NRC hold in abeyance its actions until the EPA recommences and finalizes its uranium rulemaking.

After nearly a decade of work, in early 2015 EPA developed and proposed the first set of meaningful environmental protections for ISL uranium recovery – the revisions for 40 C.F.R. § 192, at 80 Fed. Reg. 4156-4187 (Jan. 26, 2015) (EPA-HQ- OAR-2012-0788) (“first draft rule”). That rule would have been finalized by the end of the Obama

Administration, but as it was likely to be the subject of attack under the Congressional Review Act, the EPA wisely took another course to preserve its future options – at the close of the Obama Administration, the EPA re-proposed an updated set of revisions at 82 Fed. Reg. 7400-7430 (Jan. 19, 2017) (“second draft rule”) (together “proposed rules”).

In commenting on the proposed rules, NRDC and a sizable majority of other commentors expressed strong support for the EPA finally taking action.¹ These long overdue protections for western groundwater and vulnerable communities were carefully crafted and more than a decade in the making. The environmental justice impacts of U.S. domestic uranium mining legacy has been dreadful, especially to tribal and low-income communities. The EPA’s rule, if finalized, would have provided some measure of hope and accountability that the harms of the past would not be revisited (yet again) on the environmental justice communities that continue to suffer from improperly and weakly regulated uranium recovery.

Specifically, both EPA proposed rules required thorough groundwater protections, transparency with respect to restoration, and monitoring obligations that are well-grounded in law and science. All of this would have been a vast improvement over the current regulatory status quo. Both iterations of the rule merited our strong support.

But on October 30, 2018, the Trump Administration withdrew the second draft rule. *See* Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, 83 Fed. Reg. 54,543 (Oct. 30, 2018). In that withdrawal, the Trump EPA arbitrarily and capriciously reversed course on a host of legal and technical issues and opened the door for the NRC’s current misguided proposal to resume its efforts to codify the existing dysfunctional system, which we will address in a moment.

The Trump EPA gave three reasons for withdrawing the second draft uranium rule, each of which lacks legal and evidentiary basis and consigned vulnerable communities across the West to yet more contaminated groundwater.

- First, altering years of well-grounded understanding, the Trump EPA now joined the NRC and industry in newly questioning whether it had the authority under the Uranium Mill Tailing Radiation Control Act (UMTRCA) to issue the regulations. As both the Obama EPA and the undersigned detailed throughout the voluminous record, the answer is that the EPA without question has the

¹ We incorporate by reference comments by NRDC *et al.*, on EPA’s 40 CFR 192, Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, Proposed Rule, 82 Fed. Reg. 7400 (Jan. 19, 2017), Docket ID No. EPA-HQ-OAR-2012-0788; NRDC’s May 2015 Comments on 40 CFR 192, Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, Proposed Rule, 80 Fed. Reg. 4156 (Jan. 26, 2015), Docket ID No. EPA-HQ-OAR-2012-0788 (“NRDC Comments on first draft rule”). Available at <https://www.regulations.gov/docket/EPA-HQ-OAR-2012-0788/unified-agenda>.

authority to enact the uranium rule and the Trump EPA reversal of course was unfounded and an early holiday gift to a polluting industry.

- Second, in another astonishing turn that ignored both years of its own technical work and the vast majority of the record before it, the Trump EPA suggested that it no longer believed that a national rulemaking to promulgate standards is necessary as the Agency believes the existing regulatory structures are sufficient to ensure the targeted protection of public health and the environment at existing ISL facilities. Decades of experience contradict this suggestion and the Trump Administration leadership's assertion flatly contradicted that of its staff.
- Third, and finally, the Trump EPA reasoned that with the failure of the "nuclear renaissance," there is a much lower growth scenario for the uranium market and therefore the EPA did not need to act to address the fewer license applications for new ISL facilities. Notably, while we don't wholly disagree with former President Trump's EPA on the likelihood of a lower growth scenario for the uranium market, we've been witness to Congressional support for a misguided Strategic Uranium Reserve and continued support from both the Trump and Biden Administrations for artificially propping up the commercial nuclear and domestic uranium mining industries via subsidies and massive investment. As such, we think it absolutely crucial that the EPA proceed with its rule and enact those significant and overdue protections for what has been and will obviously continue to be a persistent polluting concern across the arid West.

Soon after the Trump Administration withdrew the second draft rule, in early 2019 the NRC issued its *Request for Comment on Potential Resumption of Rulemaking for Ground Water Protection at Uranium In Situ Recovery Facilities*, 84 Fed. Reg. 574-578 (Jan. 31, 2019) (comment period extended to this day via 84 Fed. Reg. 6,979 (Mar. 1, 2019)). NRDC and several of the undersigned filed a timely and extensive set of comments on May 3, 2019 on the topic of whether NRC should resume rulemaking to amend its regulations for ISL uranium recovery. We provided substantial detail, which we incorporate by reference, but we commenced with a succinct answer for the NRC – no.

Despite the extensive record, a divided Commission ruled that the NRC would proceed with its rulemaking, which is ongoing as of this day. The majority, Chairman Svinicki and Commissioners Wright and Caputo, directed Staff to move forward drafting a rule on the unsupported rationale that a number of inter-agency matters "were effectively resolved." Commissioners Baran and Hanson, by contrast, voted against the rulemaking. We quote Chairman (then Commissioner) Hanson's statement at length, as it precisely captures what we ask of NRC this day:

The Atomic Energy Act (AEA) directs the Environmental Protection Agency (EPA) to issue generally applicable standards for processing, possession, transfer, and disposal of byproduct material. The AEA separately authorizes the NRC to ensure safe management of byproduct material in a manner that conforms to the generally applicable standards

promulgated by EPA. To avoid duplication of efforts, **I believe the NRC should wait until EPA promulgates such standards.** The recent MOU that the EPA and the NRC signed in June lays out each agency's roles and responsibilities and facilitates coordination as both agencies move forward with corresponding rulemakings. If the NRC moves forward with the rulemaking now, it will be implementing the standards EPA promulgated for traditional uranium milling rather than standards for ISRs.

The NRC's ISR rulemaking was previously deferred because EPA began a rulemaking to establish generally applicable standards for ISRs. However, in 2018, EPA decided to discontinue the rulemaking because of issues raised by the public during the comment period and because the once-anticipated influx of new ISR license applications was not materializing. Even so, given the current Administration's efforts to revitalize the nuclear energy industry or the potential for a new Administration, if elected, to provide new direction, EPA might re-initiate the rulemaking in the near term. Therefore, I would wait for EPA.

Commissioner Hanson's *Comments on SECY-19-0123, Regulatory Options for Uranium in SITU Recovery Facilities*, October 9, 2020 (emphasis added). As of this day, it is our belief and understanding that NRC Staff has not submitted a draft ISL uranium rule to the Commission for its consideration.

Waiting for the EPA is all we ask of you. To do so, the NRC must dissolve the MOU and hold NRC's rulemaking in abeyance during the pendency of the EPA's actions. While we look forward to the day we can participate in a public process to assist the NRC in the revision of its rules so that scarce sources of western groundwater and vulnerable communities across the West can be protected, such a time should only come once the EPA has finalized its rule. We have requested such action from EPA Administrator Regan this very day and hope that you can work in parallel.

If you have any questions or need to discuss the matter further, we urge you to contact us at your earliest convenience.

Sincerely,

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CC: Commissioners Baran, Caputo & Wright; Andrew G. Carrera, Gary Comfort, Office of Nuclear Material Safety and Safeguards; Annette Vietti-Cook, Secretary of the Commission

Chairman Resource

From: Fettus, Geoff <gfettus@nrdc.org>
Sent: Thursday, June 10, 2021 5:00 PM
To: Chairman Resource; Hanson, Christopher
Cc: NRCExecSec Resource
Subject: [External_Sender] NRDC et al. request to hold in abeyance Docket ID NRC 2008-0421
Attachments: NRDC et al ltr NRC Chair Ur Rule 10 June 2021.pdf

Dear Chairman Hanson –

Please find attached a letter from NRDC *et al.*, requesting the Nuclear Regulatory Commission cease all work on its ongoing ISL rulemaking until such time as the Environmental Protection Agency has finalized its long overdue In Situ Leach uranium rulemaking, (Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (40 CFR Part 192)). We have written EPA Administrator Regan a parallel letter on this same topic addressing that agency's responsibilities under the Atomic Energy Act.

Please don't hesitate to contact me if you or your colleagues and staff have any difficulties with the attached pdf or other questions.

We look forward to hearing from you at your earliest convenience.

Warmest regards,

Geoff Fettus

GEOFFREY FETTUS

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