

From: [WMA](#)
To: [RulemakingComments_Resource](#)
Cc: [Oscar Paulson](#); [Katie Sweeney](#)
Subject: [External_Sender] WMA Comments on Advance Notice of Proposed Rulemaking 10 CFR Part 51 Categorical Exclusions From Environmental Review
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To whom it may concern:

Attached please find comments of the Wyoming Mining Association on the Advance Notice of Proposed Rulemaking 10 CFR Part 51 Categorical Exclusions From Environmental Review - NRC-2018-0300 RIN 3150-AK54 Federal Register/Volume 86, Number 87/Friday, May 7, 2021/Proposed Rules.

Thank you for your kind attention.

Best regards,

Travis Deti
Executive Director
Wyoming Mining Association
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WYOMING MINING ASSOCIATION

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September 21, 2021

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Subject: Wyoming Mining Association's (WMA's) Comments on Advance Notice of Proposed Rulemaking 10 CFR Part 51 Categorical Exclusions From Environmental Review - NRC-2018-0300 RIN 3150-AK54 Federal Register/Volume 86, Number 87/Friday, May 7, 2021/Proposed Rules.

Gentlemen:

The Wyoming Mining Association (WMA) is an industry association representing mining companies, contractors, vendors, suppliers and consultants in the State of Wyoming. Among its mining industry members are uranium recovery licensees, including conventional and in-situ uranium recovery operators, several companies planning new uranium recovery operations and several companies conducting final reclamation/groundwater restoration operations.

Wyoming is one of the leading uranium resource states in our country, however current production statistics cannot be provided since total uranium concentrate production in the United States for 2020 is unavailable.

The Energy Information Agency (EIA) could not publicly release data for U.S. production of uranium concentrate (U3O8) in the first quarter of 2021 stating, *"EIA could not publicly release data for U.S. production of uranium concentrate (U3O8) in the first quarter of 2021. Domestic uranium production has declined considerably in recent years, and activity did not reach a threshold where a specific production figure could be published without violating the protections that EIA has committed to provide."*

During the first quarter of 2021, three U.S. uranium facilities produced uranium, three less than in the fourth quarter of 2020. This does not mean three facilities were actively operating and producing material during the quarter. It is a count of any facility that packaged material during the quarter though they may not be in active commercial (injecting solution and drying material) operation at the time."

Source: U.S. Energy Information Agency (EIA), Form EIA 851A Domestic Uranium Production Report - Annual and Form EIA 851Q Domestic Uranium Production Report - Quarterly <https://www.eia.gov/uranium/production/quarterly/>

With the above said, based upon prior years' production, it is estimated that Wyoming accounted for between 30 and 40 percent of the total uranium concentrate production in the United States. As such the *Advance Notice of Proposed Rulemaking 10 CFR Part 51 Categorical Exclusions from Environmental Review* is of interest to the WMA. The following are the WMA's comments.

General Comments

The Advance Notice of Proposed Rulemaking lists several "housekeeping" revisions when it states:

- *Reorganization of the list of categorical exclusions to eliminate redundancy and add clarity.*
- *Revisions to eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions, to ensure that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals. For example, the NRC might revise a categorical exclusion from “Issuance of an amendment to a permit or license issued under this chapter which. . .” to “An action under this chapter that. . .”*
- *Revisions to consolidate categorical exclusions for exemptions into one category, for example, by moving the criterion for exemptions related to installation or use of a facility component located within the restricted area.*

The WMA supports these changes including elimination of redundancy and addition of clarity. In addition, the WMA particularly supports the revision that ensures “...that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals.” This change is important to the uranium recovery industry because uranium recovery operations pose the lowest risks of any of the activities in the nuclear fuel cycle. Categorical exclusions should be risk informed and tied to the risks posed by various activities as opposed to the administrative or legal definitions of the activities themselves. Consolidation of categorical exclusions into single categories would support a risk informed approach since the categories could be defined by the risks posed by the activity.

Termination by an Agreement State of licenses for AEA § 11e.(2) byproduct material

One proposed revision is “...to categorically exclude the NRC’s concurrence, under the Atomic Energy Act of 1954, as amended (AEA), § 274c., on termination by an Agreement State of licenses for AEA § 11e.(2) byproduct material where all decommissioning activities have been completed and approved and NRC’s concurrence is a final administrative step.”

The WMA strongly supports this revision. On October 1, 2018, Wyoming became an agreement state for AEA § 11e.(2) byproduct material and uranium recovery. This change is justified since any license termination involving AEA § 11e.(2) byproduct material would have had extensive review by the State’s Uranium Recovery Program (URP). Sites awaiting license termination in Wyoming, of which there are several, have been thoroughly reclaimed and the reclamation subjected to thorough review and oversight by the Nuclear Regulatory Commission (NRC) prior to October 1, 2018 and by the URP after that date. Given the above, the final administrative step of license termination is an activity that poses no risk and therefore categorically excluding it makes eminent sense. In addition, categorically excluding the “...termination by an Agreement State of licenses for AEA § 11e.(2) byproduct material where all decommissioning activities have been completed and approved...” would expedite the license termination process and reduce costs.

Exclusions of approvals of certain long-term surveillance plans of decommissioned uranium mills

One proposed revision is “...to categorically exclude approvals of certain long-term surveillance plans of decommissioned uranium mills. However, long-term surveillance plans that include groundwater monitoring might not be included in the categorical exclusion.” The WMA supports a categorical exclusion for “... long-term surveillance plans of decommissioned uranium mills.” This categorical exclusion ties well with the one regarding termination by an agreement state of licenses for AEA § 11e.(2) byproduct material discussed above and for the same reasons. On October 1, 2018, Wyoming became an agreement state for AEA § 11e.(2) byproduct material and uranium recovery. Sites awaiting

license termination in Wyoming, of which there are several, have been thoroughly reclaimed and the reclamation subjected to thorough review and oversight by the Nuclear Regulatory Commission (NRC) prior to October 1, 2018 and by the URP after that date. In addition, the long term surveillance plans must still be accepted by the Department of Energy (DOE), the agency that will take long term custody of the site at license termination. This change would also expedite the license termination process and reduce costs.

The Advance Notice of Proposed Rulemaking in regard to this change states, “*However, long-term surveillance plans that include groundwater monitoring might not be included in the categorical exclusion.*” The WMA would like to make clear that Article 8 of the State of Wyoming Constitution states:

Sec. 1. Water is state property. The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state.

In order to use (appropriate) groundwater in Wyoming, a permit must be obtained from the State. Given that water is state property in Wyoming and Wyoming is an agreement state for AEA § 11e.(2) byproduct material and uranium recovery, at least in Wyoming, long-term surveillance plans that include groundwater monitoring should be categorically excluded.

Question (2) Are there any categorical exclusions that are listed in 10 CFR 51.22(c) that the NRC should consider modifying or clarifying?

10 CFR Part 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review states:

(11) Issuance of amendments to licenses for fuel cycle plants and radioactive waste disposal sites and amendments to materials licenses identified in § 51.60(b)(1) which are administrative, organizational, or procedural in nature, or which result in a change in process operations or equipment, provided that (i) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for or consequences from radiological accidents.

It should be made clear in the final rule that actions by a licensee’s Safety and Environmental Review Panel (SERP) are categorically excluded. The language in the text in 10 CFR Part 51.22 is similar in some ways to the language included in Safety and Environmental Review Panel (SERP) amendments in uranium recovery licenses which in general is as stated in part below:

9.3 Changes, Tests and Experiments

(a) The licensee may, without obtaining a license amendment pursuant to §40.44, and subject to conditions specified in

(b) of this condition:

*i. make changes in the facility as described in the license application (as updated),
ii make changes in the procedures as described in the license application (as updated), and*

iii conduct test or experiments not described in the license application (as updated).

(b) The licensee shall obtain a license amendment pursuant to §40.44 prior to implementing a proposed change, test or experiment if the change, test, or experiment would:

- i Result in any appreciable increase in the frequency of occurrence of an accident previously evaluated in the license application (as updated);*
- ii Result in any appreciable increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the license application (as updated);*
- iii Result in any appreciable increase in the consequences of an accident previously evaluated in the license application (as updated); iv Result in any appreciable increase in the consequences of a malfunction of an SSC previously evaluated in the license application (as updated);*
- v Create a possibility for an accident of a different type than any previously evaluated in the license application (as updated);*
- vi Create a possibility for a malfunction of an SSC with a different result than previously evaluated in the license application (as updated);*
- vii Result in a departure from the method of evaluation described in the license application (as updated) used in establishing the Final Safety Evaluation Report (FSER) or the Environmental Assessment (EA) or Technical Evaluation Reports (TERs) or other analysis and evaluations for license amendments;*
- viii For purposes of this paragraph as applied to this license, SSC means any SSC which has been referenced in a staff SER, TER, EA, or Environmental Impact Statement (EIS) and supplements and amendments thereof.*

Any final rule should include language to the effect that Safety and Environmental Review Panels (SERPs) may be included in any licensed uranium recovery program and that such panels shall adhere to the above provided or similar language.

Conclusions

- The Wyoming Mining Association supports this rulemaking effort specifically because it:
 - proposes elimination of redundancy and addition of clarity;
 - *proposes "...that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals."*
 - *proposes "...to categorically exclude the NRC's concurrence, under the Atomic Energy Act of 1954, as amended (AEA), § 274c., on termination by an Agreement State of licenses for AEA § 11e.(2) byproduct material where all decommissioning activities have been completed and approved and NRC's concurrence is a final administrative step."*
 - *proposes "...to categorically exclude approvals of certain long-term surveillance plans of decommissioned uranium mills."*
 - The WMA however believes that long-term surveillance plans that include groundwater monitoring should be included in the categorical exclusion especially in Wyoming where water is state property and the State is an agreement state for uranium recovery and AEA § 11e.(2) byproduct material.
- The WMA believes that language should be included in the proposed rule to the effect that Safety and Environmental Review Panels (SERPs) may be included in any licensed uranium recovery program and that such panels shall adhere to the above provided or similar language.

The Wyoming Mining Association appreciates the opportunity to comment on this *Advance Notice of Proposed Rulemaking 10 CFR Part 51 Categorical Exclusions from Environmental Review*. If you have any questions please do not hesitate to contact me.

Best regards,



Travis Deti
Executive Director

CC: Katie Sweeney, National Mining Association