

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8907; NRC-2019-0026]

**Draft Programmatic Agreement Between the U.S. Nuclear Regulatory Commission,
U.S. Environmental Protection Agency, Navajo Nation Tribal Historic Preservation
Office, New Mexico State Historic Preservation Office, Bureau of Indian Affairs,
and United Nuclear Corporation Regarding the United Nuclear Corporation Mill
Site and Northeast Church Rock Mine Site located in McKinley County, New
Mexico**

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on a draft Programmatic Agreement (PA) between the NRC, U.S. Environmental Protection Agency (US EPA), Navajo Nation Tribal Historic Preservation Office (NNTHPO), New Mexico State Historic Preservation Office (NMSHPO), Bureau of Indian Affairs (BIA), and United Nuclear Corporation (UNC). The purpose of this draft PA is to resolve any adverse effects to historic properties identified during consultation for a proposed license amendment application for the UNC Mill Site.

DATES: Submit comments by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the **Federal Rulemaking Website**:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2019-0026**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

- **Email comments to:** UNC-ChurchRockPA@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Ashley Waldron, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-7317, email: Ashley.Waldron@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID **NRC-2019-0026** when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and

search for Docket ID **NRC-2019-0026**.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents,

by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays

B. Submitting Comments

The NRC encourages electronic comment submission through the **Federal Rulemaking Website** (<https://www.regulations.gov>). Please include Docket ID **NRC-2019-0026** in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On September 24, 2018, UNC submitted a license amendment application (ADAMS Package Accession No. ML18267A235) to amend its Source Material License No. SUA-1475 for the former UNC Church Rock Mill Site in accordance with part 40 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Source Material.” UNC is requesting that the NRC grant a license amendment that would allow disposal of Northeast Church Rock (NECR) mine waste on top of the tailings impoundment at the UNC Church Rock Mill Site (UNC Mill Site) in McKinley County, New Mexico. The NECR Mine Site is located on Navajo Nation trust land and the adjacent UNC Mill Site is located on private land owned by UNC.

Pursuant to 36 CFR 800.8, the NRC is using its National Environmental Policy Act process for developing the Environmental Impact Statement (EIS) to facilitate consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA).

On November 13, 2020, the NRC requested comment (85 FR 72706) on its draft EIS that includes the preliminary analysis that evaluates the environmental impacts from the proposed action and alternatives to the proposed action. After comparing the impacts of the proposed action to the no-action alternative, the NRC staff, in accordance with the requirements in 10 CFR part 51, preliminarily recommended the proposed action which would authorize UNC to transfer and dispose the waste from the NECR

Mine on top of the UNC tailings impoundment. The comment period on the draft EIS closed on October 31, 2021 (86 FR 32285).

Four archaeological sites fall within the area of potential effect (APE) for direct effects: Sites LA 11617, NM-Q-20-69, NM-Q-20-70, and NM-Q-20-71. Each of the four sites within the direct APE includes Anasazi-period artifact scatters and/or habitation sites. A fifth site, NM-Q-20-72, includes historic and Anasazi-period pictographs and is located fully outside the proposed action's direct APE but within 10 m [33 ft] of the direct APE (i.e., the indirect APE), warranting consideration of the proposed action's indirect effects on the setting of this cultural site. The NRC conducted a site visit with the NNTHPO on December 12, 2019 (ADAMS Accession No. ML21328A180). As part of its consultation pursuant to NHPA Section 106, NRC staff discussed the recommended eligibility, potential impacts, and recommendations for avoidance and mitigation measures for each of the five sites. The NMSHPO (ADAMS Accession No. ML20107F771 and ML21312A473); and NNTHPO have concurred with the NRC staff's eligibility recommendations (ADAMS Accession No. ML20167A115). Due to the presence of historic properties located within the direct and indirect APE, the NRC staff concluded that historic properties would be adversely affected by the proposed project.

The NRC met with US EPA, BIA, NNTHPO, the NMSHPO, and UNC to discuss how to address the adverse effects. The NRC proceeded with development of a PA to resolve adverse effects. Pursuant to this agreement, once this agreement is executed, the US EPA will become the lead agency for implementation of the PA.

The draft PA addresses the potential direct and indirect adverse effects from the movement of waste from the NECR Mine to the UNC Mill Site and ensures that appropriate mitigation measures are implemented. The final EIS will reflect the PA once finalized and therefore conclude NHPA Section 106 consultation.

III. Request for Public Comment

The NRC is requesting public comment on the draft PA. The NRC will consider these comments before finalizing the PA, which will be published as an appendix in the final EIS. The draft PA is available in ADAMS under Accession No. ML21302A221.

Dated: December 1, 2021.

For the Nuclear Regulatory Commission.

/RA/

Christine L. Pineda, Acting Chief,
Environmental Review Materials Branch,
Division of Rulemaking, Environmental, and
Financial Support,
Office of Nuclear Material Safety,
and Safeguards.