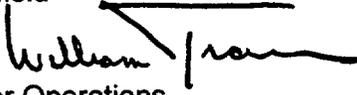




UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 28, 1999

MEMORANDUM TO: Chairman Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers 
Executive Director for Operations

SUBJECT: STAFF RESOURCES NEEDED TO DEVELOP AND FINALIZE
MEMORANDA OF UNDERSTANDING WITH ENVIRONMENTAL
PROTECTION AGENCY AND EPA-AUTHORIZED STATES FOR
REGULATION OF GROUND WATER AT *IN SITU* LEACH URANIUM
RECOVERY FACILITIES, STAFF REQUIREMENTS MEMORANDUM
M990617

Attached for your information are staff's estimates of the scope and resources that would potentially be needed for developing and finalizing Memoranda of Understanding (MOUs), with the U.S. Environmental Protection Agency (EPA) and States authorized to administer EPA requirements for ground-water protection (EPA-authorized States), as they apply to the recommendations in SECY-99-013. These estimates are in response to the Commission's August 3, 1999, Staff Requirements Memorandum, pertaining to the June 17, 1999, briefing on the Uranium Recovery Program.

Staff estimates that between 0.5 and 0.7 full-time equivalents (FTEs) per year for 3 years would be required from the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of the General Counsel (OGC) to accomplish an optimistic scenario of 5 MOUs (one MOU encompassing all parties within EPA, and one MOU, for each of the four states currently with *in situ* leach (ISL) facilities). A non-optimistic scenario requiring 10 MOUs is also possible, because the EPA regions exercise significant degrees of autonomy and may require separate MOUs with each region. Staff estimates that between 0.7 and 1.0 full-time equivalent (FTE) per year for 5 years would be required from NMSS and OGC to accomplish this non-optimistic scenario. It is also worth noting that the resources needed to achieve these MOUs while maintaining the current NRC program have not been included in the FY 2000 - FY 2001 budget or future forecasts.

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On a related matter, staff continues to solicit input on the three Uranium Recovery Commission Papers from the Interagency Steering Committee on Radiation Standards. The chairperson of the Naturally Occurring Radioactive Material subcommittee indicated that a request for informal comments is being sent to the subcommittee members. The subcommittee will meet in October or early November to gather the comments and issue them to the Nuclear Regulatory Commission.

The Office of the Chief Financial Officer has reviewed this memorandum for resource implications and has no objection.

Attachment: Scope and Resource Estimates for
Pursuing Memoranda of Understanding
with EPA and EPA-authorized States

cc: ~~SECY~~
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**SCOPE AND RESOURCE ESTIMATES FOR PURSUING
MEMORANDA OF UNDERSTANDING WITH
U.S. ENVIRONMENTAL PROTECTION AGENCY AND
EPA-AUTHORIZED STATES**

1. BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) has historically regulated operations at *in situ* leach (ISL) uranium recovery facilities under the authority of the Atomic Energy Act of 1954, as amended (AEA). The uranium recovery industry, however, believes that NRC regulation of ground water at these facilities duplicates the ground-water protection programs administered by the U.S. Environmental Protection Agency (EPA) or EPA-authorized States under the Safe Drinking Water Act of 1974, as amended. The National Mining Association (NMA), which represents a number of companies involved in uranium recovery, provided a "White Paper" to the Commission, in April 1998, that outlined the industry's concerns with NRC's policies affecting uranium recovery activities. One of these concerns involved NRC jurisdiction and dual regulation of ground-water protection at ISL facilities. The NMA's preferred approach for addressing dual regulation of ground water is for the NRC to determine that it does not have jurisdiction in the well-fields at ISL facilities.

The staff analyzed the NMA's concerns and recommendations about dual jurisdiction at ISL facilities and presented its analysis and conclusions in SECY-99-013, "Recommendations on Ways to Improve the Efficiency of NRC Regulation at *In Situ* Leach Uranium Recovery Facilities." In the Commission Paper, the Office of the General Counsel (OGC) concluded that the AEA provides the NRC with the authority to regulate ground-water protection at ISL facilities. The OGC further concluded that the Commission could exercise discretion regarding its authority and withdraw from the active regulation of ground water at ISLs by relying on the Underground Injection Control programs presently administered by the EPA or an EPA-authorized State. This approach is similar to the way radioactive material transportation issues are addressed with the U.S. Department of Transportation. The OGC recommended that the Commission adopt a rulemaking to codify this approach, and recommended that the Commission consider developing a Memorandum of Understanding (MOU) with EPA or the EPA-authorized States.

Staff also outlined that the implementation of NRC withdrawal from active ground-water regulation at ISLs would be pursued as part of the rulemaking for a new 10 CFR Part 41 (SECY-99-011, "Draft Rulemaking Plan: Domestic Licensing of Uranium and Thorium Recovery Facilities - Proposed New 10 CFR Part 41"), and asked for Commission direction on whether to pursue an MOU with the EPA or the EPA-authorized States. Staff also indicated that it should be noted that if NRC chooses to pursue an MOU with the EPA, the costs for such an effort would be passed on to the licensees through increased 10 CFR Part 171 fees. Staff briefed the Commission on the contents of SECY-99-013, and two other Uranium Recovery Commission Papers (SECY-99-011 and SECY-99-012), on June 17, 1999.

The Commission issued Staff Requirements Memorandum (SRM) M990617, dated August 3, 1999, on staff's June 17, 1999, briefing on the Uranium Recovery Program. The SRM directed that, "The staff should provide an estimate of resources that would be needed to develop and

finalize Memoranda of Understanding with EPA and EPA-authorized states as related to the staff's recommendation for regulations of ground water at ISL facilities."

2. SCOPE AND DURATION OF EFFORT

Staff held preliminary discussions on coordinating MOU development with EPA's Office of Radiation and Indoor Air (ORIA) on August 3, 1999. The ORIA identified that it, as well as other EPA offices and regions, would likely be impacted by the NRC's potential programmatic changes in all three Commission Papers. Further, the other EPA offices and the affected EPA regions would need to be included in any discussions of MOU development. The ORIA indicated that it would function as a centralized contact point for future EPA and NRC coordination. Also, it is unclear whether one MOU covering EPA Headquarters and regions could be finalized, or whether a separate MOU for each region would be needed, because EPA regions exercise a significant degree of autonomy.

NRC currently licenses six commercial ISL operations in three Western States (Nebraska, New Mexico, and Wyoming). In addition, the State of Texas licenses six commercial ISL operations under its Agreement State authority. No other ISL operations are licensed; however, recoverable uranium deposits also occur in other Western States, such as Colorado, Utah, and Washington; and on lands controlled by the Indian Nations and Tribes. Only those States that currently have ISL facilities would be included in the MOU development effort at this time. Potential parties to the MOUs are provided in the following table.

POTENTIAL PARTIES IN MOU NEGOTIATIONS	
EPA Headquarters and Regions [affected States within the Region]	<ul style="list-style-type: none"> • Office of Radiation and Indoor Air • Office of Ground Water and Drinking Water • Office of the General Counsel • American Indian Environmental Office • Region 6 [Texas, New Mexico] • Region 7 [Nebraska] • Region 8 [Colorado, Utah, Wyoming] • Region 9 [Indian Lands] • Region 10 [Washington]
EPA-authorized States currently with ISL facilities	<ul style="list-style-type: none"> • Nebraska • New Mexico • Texas (Agreement State) • Wyoming
EPA-authorized States with uranium ore deposits, but no ISL facilities*	<ul style="list-style-type: none"> • Colorado (Agreement State) • Indian Lands (Navajo Nation and Hopi Tribe programs are administered by EPA) • Utah • Washington (Agreement State)
<p>* These States would not be included in MOU negotiations until the NRC or Agreement State receives a license application for an ISL facility.</p>	

Staff anticipates that the MOU negotiation process would begin with an open discussion forum among the potential parties, much like a scoping meeting. Discussions among parties would initially be conducted by designated representatives in three to five focused working group meetings. For expediency, the working group meetings would be limited to 10 to 12 designated representatives from the participating parties (two or three NRC representatives, two or three EPA representatives, and one representative from each of four States). The objective of the meetings is to inform participants of proposals, solicit input, and define issues to be addressed in the MOUs. Draft Memoranda would then be developed from the information gathered during the working group meetings and sent to the signatories for negotiating language agreeable to the parties involved. Optimistically, a minimum of five MOUs would be needed (one MOU with the EPA, covering the regions and Indian Lands; and four MOUs covering the States -- one MOU for each State currently with ISL facilities). Non-optimistically, as many as 10 MOUs could potentially be needed, because the EPA regions exercise a significant degree of autonomy and may require a separate MOU for each region.

As a reference point on the time required to develop an MOU, the Office of Nuclear Material Safety and Safeguards (NMSS) recently negotiated an MOU encompassing the control of orphaned sources with one office of the U.S. Department of Energy (DOE). This effort took about 5 years, including periods of inactivity. It has been estimated that the active portion of the process took about 2 years, with the majority of the time involving the negotiation of agreement language with DOE attorneys. The timeframe for a process like the proposed EPA MOUs could expand, as a result of changes in participant representation during the scoping and negotiation processes.

3. ESTIMATED RESOURCES

Two potential scenarios for pursuing MOUs with the EPA and EPA-authorized States are possible. Optimistically, 5 MOUs may be necessary (one MOU encompassing all parties within the EPA -- and four MOUs -- one for each State currently with ISL facilities). Staff estimates that between 0.5 and 0.7 full-time equivalent (FTE) per year for 3 years would be required from the NMSS and the OGC to accomplish this optimistic scenario. A non-optimistic scenario requiring 10 MOUs is also possible, because the EPA regions exercise a significant degree of autonomy and may require a separate MOU for each region. Staff estimates that between 0.7 and 1.0 FTE per year for 5 years would be required from the NMSS and the OGC to accomplish this non-optimistic scenario.

If the Commission decides to exercise its discretion and rely on the EPA's UIC program for active regulation of ground-water protection and then develop MOUs with the EPA and EPA-authorized States, then the resources needed to achieve these MOUs would nearly offset, for a period of 3 to 5 years, the 1.5 FTE savings for eliminating dual regulation at ISL facilities, as forecasted in SECY-99-013. However, it is presumed that NRC's current regulatory program would continue unchanged while the MOU negotiations proceed. The FTE required to develop the MOUs under either the optimistic or non-optimistic scenarios while continuing the current NRC program are not currently included in the FY 2000 - FY 2001 budget. Resources to conduct these efforts would have to be included in the budget in future years if it is determined that the MOUs should be developed. The savings forecasted in SECY-99-013 would not be realized until after the MOUs are finalized and the NRC relies on EPA's UIC program for active regulation of ground-water protection.

On a related matter, staff continues to solicit input on the three Uranium Recovery Commission Papers from the Interagency Steering Committee on Radiation Standards. The chairperson of the Naturally Occurring Radioactive Material subcommittee indicated that a request for informal comments is being sent to the subcommittee members. The subcommittee will meet in October or early November to gather the comments and issue them to the Nuclear Regulatory Commission.

The Office of the Chief Financial Officer has reviewed this memorandum for resource implications and has no objection.

Attachment: Scope and Resource Estimates for Pursuing Memoranda of Understanding with EPA and EPA-authorized States

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