



State of Utah

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DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
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Director

March 2, 2017

Sarah Lopas
Office Allegation Coordinator
Office of State and Tribal Programs
Nuclear Regulatory Commission
Washington D.C. 20555
sarah.lopas@nrc.gov

RE: Utah Division of Waste Management and Radiation Control's Responses to Allegations Regarding Utah Agreement State Program and Division of Waste Management and Radiation Control Actions by Uranium Watch dated January 26, 2017

Dear Ms. Lopas:

This letter is in response to the Allegation Letter dated January 26, 2017 from UraniumWatch. The Allegation Letter primarily raises legal issues but also raises a number of technical program issues as well as factual statements regarding the Rio Algom facility. As to the legal issues, I requested a detailed legal evaluation and analysis by the Utah Attorney General's Office. The full legal analysis is enclosed as Exhibit A. The specific technical program and factual issues raised in the Allegation Letter are addressed below. Each of the specific technical program and factual issues addressed are listed below in *italics*, followed by the DWMRC's response.

Allegation Letter Parts 1 and 2.

DWMRC Response:

Parts 1 and 2 of Uranium Watch's comments address compliance with the AEA. See Attorney General Response.

Allegation Letter 3.

Recently, the DWMRC proposed a licensing action that made clear that the DWMRC has not, and does not intend to, prepare independent agency environmental analyses for licensing actions associated with uranium mills. In November 2016 the DWMRC issued the License Renewal package for the Rio Algom Mining LLC, Lisbon Valley Uranium Mill, San Juan County, 11e.(2) Radioactive Materials License UT1900481 Renewal Application.

DRC-2017-001283

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Allegation Letter 3.1.

The License Renewal package included a Technical Review and Environmental Assessment Report (TREA), dated November 2016.4 The TREA was, apparently, an attempt by the DWMRC to fulfill certain statutory and regulatory requirements associated with licenses for 11e.(2) byproduct material impoundments and operations that fall under Title II of UMTRCA. The TREA describes the format:

A description of the format of the TREA is as follows:

REVIEW TOPIC:

A brief description of what information was provided by the Licensee and a justification from the DWMRC staff of why the information provided by the Licensee is complete.

APPLICABLE RULE(S) OR REGULATION(S):

The DWMRC will list the State of Utah Administrative Code Rules (UAC) and the Federal Regulations that apply to the section topic.

REFERENCES:

The DWMRC Staff will list and reference any document(s) used in the review of the section.

Section 7.0 of the TREA discusses Environmental Effects:

SECTION 7.0-ENVIRONMENTAL EFFECTS

The requirements of this section are discussed in the subsections 7.1 through 7.7 below.

APPLICABLE RULE(S) OR REGULATION(S):

R313-24-3(1)(a) Environmental Analysis

REFERENCES:

U.S. Nuclear Regulatory Commission NUREG 1569: Standard Review Plan for In Situ Leach Uranium Extraction License Applications, Section 7.0: Environmental Effects.

U.S. Nuclear Regulatory Commission NUREG 1748: Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Section 6.4: Environmental Impacts.

U.S. Nuclear Regulatory Commission Regulatory Guide 3.8: Preparation of Environmental Reports for Uranium Mills, Chapter 5: Environmental Effects of Mills and Mine Operation.

DWMRC Response:

On March 26, 2013, the Division of Radiation Control (now the Division of Waste Management and Radiation Control) emailed Rio Algom a spreadsheet of the Topics to be addressed in the RML renewal application. This spreadsheet also indicates:

- Which topics are part of the technical evaluation and which topics are part of the environmental assessment;
- Which State of Utah Rules, Federal Regulations and RML License Conditions are applicable; and
- What reference material would be used for the review.

Staff primarily used Table 1 from NUREG-1569 to develop the list but also made sure that the list was applicable to other guidance documents (e.g., NRC Reg. Guides 3.5 and 3.8). The purpose of providing this information was to:

- Make sure that the Licensee provide the necessary information for a complete application;
- To provide a format that both the Licensee and DWMRC staff would use to make the review and subsequent interrogatories (requests for information) comparable to the application and NRC guidance documentation.
- That same format was also used in the Technical Report and Environmental Assessment, again for comparison purposes.

The Commenter used Section 7.0 as an example. When comparing Section 7.0 in the TREA with Section 7.0 in NUREG 1569, they are comparable.

Allegation Letter 3.2.

The 16-page Section 7 identifies some, but not all, of the potential environmental effects of the renewed license. Each Environmental Effect section contains 1) a short quote from a Licensee document (without a citation), 2) sometimes a brief DWMRC discussion; 3) the statement that: DWMRC staff concluded that the effects of the activities currently conducted at the Mill site will be minimal and have concluded no further information is required.; 4) the Applicable Rules(s) or Regulations at R313-24-3, Environmental Analysis; and 5) a list of References.

DWMRC Response:

When comparing Section 7.0, including subsections, in the TREA with Section 7.0, including subsections, in NUREG 1569, they are comparable.

Citations were not included because the quotes from the application came from the same section number as was used in the TREA and License application. DWMRC staff can make that clearer in the introductory narrative for future TREAs.

Allegation Letter 3.3.

For some reason, the DWMRC does not use, or refer to, two other NRC Standard Review Plans applicable to conventional uranium mill operations: 1) Standard Review Plan for Conventional Uranium Mill and Heap Leach Facilities — Draft Report for Comment (NUREG-2126), November 2014, and 2) Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978 (NUREG-1620, Revision 1), June 2003.

DWMRC Response:

The DWMRC agrees it did not use the DRAFT NUREG-2126 dated November 2014 because it was not available in 2013 when the application was being developed by Rio Algom. Additionally, it is a DRAFT document and has not been adopted by the NRC as a reference document. Also, DRAFT NUREG-2126 does not have an Environmental Impact Section and using it would not address the concerns of the commenter.

NUREG 1620 Rev. 1, is used by the DWMRC and in applicable sections of the TREA was referenced (for example Sections 6.2, 6.4, 6.6.1, etc.). NUREG 1620 is primarily used by the DWMRC staff in reviews of construction work on tailing impoundments. For example, the review of tailings impoundment 4B at the White Mesa Uranium Mill used NUREG 1620.

Allegation Letter part 3.4.

DWMRC Response:

See Attorney General Response.

Allegation Letter part 4.

DWMRC Response:

See Attorney General Response.

Allegation Letter 5.

Upcoming DWMRC Licensing Actions

Allegation Letter 5.1.

The DWMRC is expected to release the White Mesa Uranium Mill License Renewal package for public comment in the near future. That package is expected to include the draft renewed license, an environmental analysis of the License Renewal, a technical report, additional technical information, and DWMRC's responses to the first round of comments on the License Renewal, which were submitted by the public in 2011. The White Mesa Mill has been in timely renewal since 2007—a very long time.

DWMRC Response:

The commenter is correct the White Mesa Uranium Mill has taken a very long time. However, the additional time spent is in direct response to comments received during the public comment period held by the Division of Radiation Control when the initial draft license renewal was available for public review and comment in 2011. The DRC received comments requiring a more extensive environmental analysis as part of the license renewal. Consequently, the DRC determined to perform a very comprehensive evaluation that included an extensive application of the MILDOS-AREA computer modeling program. Use of this program does require significant time to validate the various input parameters and operating conditions as well as the results. In concert with the license renewal work, the

agency has been working to maintain its ongoing compliance monitoring and oversight of the White Mesa Mill and other licensees.

Allegation Letter 5.2.

There is now a concern that the the DWMRC has not, and will not, produce its own analysis of the environmental impacts of the continued operation of the White Mesa Mill, its reclamation, and long-term presence in the community, as required by the AEA. When the Division of Radiation Control (predecessor to DWMRC) issued the licensing package for public comment in 2011, the package did not contain any environmental analysis of the License Renewal, contrary to the AEA. This concern is exacerbated by the fact that many of the documents submitted to the DWMRC or DRC regarding the environmental impacts of the Mill operation are several years out of date.

DWMRC Response:

The DWMRC disagrees with the commenter. The DWMRC did do an environmental assessment of the White Mesa Uranium Mill. It was called the Safety Evaluation Report for The Denison Mines White Mesa Mill 2007 License Renew Application, dated October 2011. The SER used the topics found in NRC Regulatory Guide 3.5 as an outline. Part of the 2007 renewal application was an Environmental Assessment Report and a MILDOS-AREA assessment that was prepared by Denison Mines. DRC staff reviewed both of those documents and found them to be satisfactory and met appropriate regulatory requirements.

Allegation Letter Part 6. Conclusion

DWMRC Response:

See Attorney General Response.

We appreciate your attention to this matter. If you have any questions, please call Phillip Goble at (801) 536-4044.

Sincerely,



Scott T. Anderson, Director
Division of Waste Management and Radiation Control

STA/RMJ/ka

Enclosure: Attorney General Response Letter (DRC-2017-001282)

c: Sarah Fields, Uranium Watch



FEB 22 2017

TRC-2017-00128Z

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OAG-009-17

February 22, 2017

Scott T. Anderson, Director
Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

Dear Mr. Anderson:

This letter is in response to your request for an analysis of the legal issues raised in the letter dated January 26, 2017, addressed to the Nuclear Regulatory Commission ("NRC"), from Uranium Watch entitled: "Allegations Regarding Utah Agreement State Program and Division of Waste Management and Radiation Control Actions" (the "Allegation Letter"). You have asked me to focus particularly on the legal issues raised in paragraph 4.1 on page 6. I understand that you will provide this analysis letter to the NRC and that it will be public.

The Allegation Letter, Issue No. 4, relates to UAC R313-24-3 entitled "Environmental Analysis." Under this rule, each new license application, renewal, or major amendment "shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected." The rule goes on to describe the specific information that the environmental report should include. The Allegation Letter raises several objections to UAC R313-24-3. Each issue is addressed in turn, below.

ISSUE 4.1.1

While the Allegation Letter acknowledges that the requirements in the Utah rule "are taken almost word for word from the 42 U.S.C. § 2021(o)(3)(c)(i)-(iv)," Uranium Watch argues that the Utah rule "severely limits the scope of the licensee's environmental report." The basis for this argument is the Atomic Energy Act ("AEA") to the effect that to qualify as an Agreement State, that State's law "shall include" *but not be limited to*, the factors set forth in 42 U.S.C § 2021(o)(3). However, that statutory provision does not include the expansive language, *but not limited to*. Rather, the statutory language states that the Agreement State's law "shall require . . . a written analysis . . . , which analysis shall include—[items (I through (iv)).]" The Utah rule does include items (i) through (iv), almost verbatim. Therefore, the Utah rule is entirely consistent with the federal requirement. In addition, this specific issue is without merit for the following reasons:

- The Allegation Letter provides no reference to additional categories of information that may be useful or necessary to an analysis, beyond the specific requirements of R313-24-3(1)(a)-(d);
- The requirements in the Utah rule are substantially identical to the requirements of 42 USC § 2021(o)(3)(C)(i)-(iv), which is all that would be required of a person licensed directly by the NRC.
- As to any specific license or renewal, Uranium Watch has the legal right, pursuant to UCA § 19-1-301.5, to raise any issues that Uranium Watch believes that the Division of Waste Management and Radiation Control (“DWMRC”) failed to consider, whereupon the DWMRC will review and, if necessary, require additional information; and,
- The DWMRC has authority to request additional information if reasonably necessary to complete applicable environmental analysis.

ISSUE 4.1.2

The Allegation Letter takes issue with the nature and scope of the Director’s “written analysis” of the environmental report. Uranium Watch contends that the “written analysis” set forth in UAC R313-24-3(3) is “not the written analysis” required by 42 USC § 2021(o)(3)(C), specifically citing 1978 House Reports I and II. I understand this comment to mean that the Director’s “written analysis” required under Utah law is less rigorous than required by federal law because it is a review of the licensee’s submission rather than an independent analysis conducted by the State similar to that required by the National Environmental Policy Act (“NEPA”)—an act that applies to federal actions, not state actions. This allegation relies entirely on a version of the federal bill that was rejected and that did not pass. The House Reports cited in the Allegation Letter are discussing a rejected version of the federal statute. Here is a comparison of the current opening paragraph of 42 USC § 2021(o) with the version that was reviewed in House Report 95-1480, as reported at p. 55 of House Report 95-1480 Part II, a version where a NEPA-like review was being considered.

42 USC § 2021(o)(3) procedures which –

~~(C) require the preparation for each license of a written analysis consistent with the policy and provisions of the National Environmental Policy Act of 1969 of the impact of the operations under such license on the environment, which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings; and~~

It is clear, then, that in the end, Congress expressly declined to require that an Agreement State prepare a written analysis to be “consistent with” NEPA requirements. The statute, therefore, sets forth its own criteria for the environmental report rather than relying on the NEPA. Moreover, there is also no language in the AEA or any other authority that requires an Agreement State to perform completely independent environmental analysis. It is acceptable for an Agreement State to review and analyze environmental analysis submitted by a licensee. Thus, the existing Utah rules are fully consistent with federal requirements.

ISSUE 4.1.3

Finally, the Allegation Letter takes issue with an alleged difference between the Utah Rule and federal requirements regarding the timing of construction of licensed facilities. Uranium Watch contends that while the federal rule prohibits construction prior to conducting environmental analysis, while the Utah rule states that commencement of construction prior to the issuance of a license or amendment shall be grounds for denial of the license or amendment.” UAC R313-24-3(2). The Utah rule is not inconsistent with the federal requirement. If anything, the Utah rule is more protective than federal law because it captures the licensing or amendment, not merely the environmental review. The environmental review is but one step in the licensing process or any amendments thereto. Under the federal rule, construction could begin once the environmental review is completed, while under the Utah standard, if construction begins prior to the license (or amendment) becoming final, that constitutes grounds for denying the license or amendment. Moreover, Uranium Watch is not harmed by any difference in the rules.

In conclusion, the Utah rules are consistent with federal requirements and the Allegation Letter should be rejected.

Sincerely,



Bret F. Randall,
Assistant Attorney General

BFR/srb