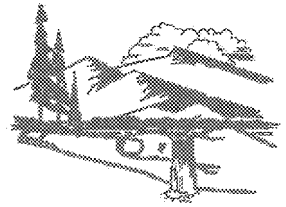




# Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor

Todd Parfitt, Director

July 14, 2017

The Honorable Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, D.C. 20460

RE: Comments on EPA's Proposed Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, 40 C.F.R. Part 192

Dear Mr. Pruitt,

Thank you for the opportunity to provide the Environmental Protection Agency (EPA) with the State of Wyoming Department of Environmental Quality's (WYDEQ) comments and concerns regarding the EPA's proposed Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, 40 C.F.R. Part 192 ("Proposed Rule"). The WYDEQ has identified concerns with the revised Proposed Rule, including many of the same concerns identified in the May 27, 2015<sup>1</sup>, letter on the original Proposed Rule. The WYDEQ's position is that current state regulatory programs are protective of health, safety, and the environment and that the Proposed Rule is duplicative of the state's requirements. The WYDEQ therefore respectfully requests that the EPA withdraw the Proposed Rule.

## A. Wyoming UIC Program

Wyoming has a long history of uranium production, and currently produces more uranium than any other state in the U.S. The WYDEQ has been involved in the regulation and oversight of in-situ uranium mining for over 30 years (*See* Wyoming Statutes §§ 35-11-427 through 436, first enacted in 1979). The WYDEQ has authority to administer its own underground injection control (UIC) program under the Safe Drinking Water Act (SDWA). Class III wells and aquifers used for underground in-situ mining are regulated under the State's UIC program by the Land Quality Division, which also issues mine permits for uranium in-situ recovery (ISR) facilities (W.S. §§ 35-11-426 through 427).

The WYDEQ UIC program currently regulates in-situ mining in a manner that is equal to or more stringent than the mining standards established by the EPA under the SDWA. The WYDEQ's regulation of uranium ISR facilities has always included extensive monitoring and reporting requirements, as well as post-mining groundwater restoration (*See* Land Quality Division Noncoal Rules Ch. 11, §§ 2(b) and 5(a)(ii)). In addition, the WYDEQ requires restoration of groundwater by ISR mining regardless of whether the operations occur within exempted areas in underground sources of drinking water (USDWs) or in other groundwater not suitable for drinking water. To date, the WYDEQ has approved groundwater restoration of 11 mine units and several research and development operations. Throughout the successful history of the WYDEQ UIC program, the EPA has never notified the WYDEQ that the program did not protect groundwater related to ISR mining operations in Wyoming as required by the EPA or the NRC. Despite the demonstrated success of the WYDEQ's UIC program, the EPA's Proposed Rule was initially developed without consultation with or consideration of the WYDEQ. The WYDEQ has considerable expertise in this area and has regulatory requirements that have been shown to be effective. The WYDEQ would

<sup>1</sup> EPA-HQ-OAR-2012-0788-0185

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The Honorable Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
40 C.F.R. Part 192

welcome the opportunity to work with the EPA in developing a rule that is practical and enforceable. The WYDEQ position is that if the EPA carefully considers the state program expertise, the EPA would likely find the proposed rule to be duplicative and unnecessary.

### **Lack of Consultation with the WYDEQ**

Given the WYDEQ's history and experience with the regulation and oversight of in-situ uranium mining, the WYDEQ remains concerned by the EPA's lack of consultation with the WYDEQ regarding the original Proposed 192 Rule and the revised New Regulation 192 Rule. At the time the original rule was withdrawn, the EPA chose to revise the Proposed Rule without consultation with the states, and thereby failed to incorporate WYDEQ's extensive experience and knowledge on this subject.

The WYDEQ appreciates recent efforts by the EPA to consult with the states. However, in regard to the revised New Regulation 192 the EPA has not complied with its cooperative federalism obligations to consult with states on rule promulgations that adversely affect state regulatory programs, economics, and sovereign authorities. Executive Order No. 13132, 64 Fed. Reg. 43255 (August 4, 1999), directs the EPA to adhere to specified "fundamental federalism principles" and to meaningfully consult with state governments whenever the agency considers creating "policies that have federalism implications." *Id.* at § 2. Before "undertaking to formulate and implement" any policy of that type, agencies shall:

- (1) Encourage states to develop their own policies to achieve program objectives and to work with appropriate officials in other states;
- (2) Where possible, defer to the States to establish standards;
- (3) In determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards or otherwise preserve State prerogatives and authority; and
- (4) Where Federal statutes require national standards, consult with appropriate State and local officials in developing those standards.

*Id.* at § 3(d). "With respect to Federal statutes and regulations administered by the states, the national government shall grant the states the maximum administrative discretion possible." *Id.* at § 3(c).

The WYDEQ disagrees with the EPA's assertion that the Proposed Rule does not have "federalism implications" and that Executive Order No. 13132 is therefore not applicable in this context. *See* Proposed Rule, 7425. The Proposed New Regulation will certainly have "substantial direct effects" on Wyoming, its relationships with the EPA and the NRC, and "the distribution of power" between the WYDEQ's UIC program and the EPA and the NRC. *See* EO 13132, § 1(a). Promulgation of the Proposed New Regulation 192 does not change the fact that the WYDEQ's UIC program is still enforceable law that the WYDEQ must implement to protect groundwater in Wyoming. The rule as proposed will create conflicting, confusing, and redundant regulatory burdens for uranium operators in Wyoming, and will require the WYDEQ's staff and resources to resolve those difficulties in individual permitting contexts. These federalism implications should prompt the EPA to withdraw the rule and to consult with the WYDEQ during the rulemaking process, as well as when revising the Proposed Rule, as mandated by Executive Order 13132.

The WYDEQ therefore requests that the EPA withdraw this rulemaking and consult with the states prior to finalizing the Proposed New Regulation 192. By consulting with the WYDEQ, the EPA will gain valuable insight into the existing regulations and programs that currently govern this industry. The WYDEQ believes that close consultation with the EPA would verify that state regulations and programs currently in place adequately provide for the protection of human health and the environment.

### **B. Stability Monitoring Requirements**

The WYDEQ requests that the EPA remove a fixed time period for the stability-monitoring requirement. The EPA states in the Proposed Rule that the six-year monitoring period is based on the corrective action programs from the Resource Conservation and Recovery Act (RCRA) Subtitle C. However, the regulation for this program, 40 C.F.R Part 264.96(c), states that the compliance period is three years. The additional three years is unnecessarily added to the long-term stability-monitoring period. The regulator, being either the NRC or the State, is in the best position to determine the initial stability monitoring period's duration based on site-specific information. The WYDEQ believes that an initial monitoring period that is based upon site-specific modeling is equal to and in some cases more protective than the Proposed Rule's fixed three-year initial stability monitoring period. This would allow regulatory flexibility to determine protective, justifiable, and achievable outcomes.

In the background economic analysis of the Proposed Rule, the EPA contemplated an integrated approach. Specifically, the "EPA also considered another regulatory alternative: a narrative standard with no fixed monitoring period. Because the compliance requirements under this alternative would be determined by the licensing body and thus extremely site and case specific, EPA did not estimate costs or impacts for this alternative."<sup>2</sup> The WYDEQ suggests that the EPA examine this alternative more closely as it is more in alignment with the authorities granted to the EPA under the Uranium Mill Tailings Radiation Control Act (UMTRCA).

Under Section 275(b) of UMTRCA, the EPA is required to promulgate standards of general application for protection of public health, safety, and the environment from radiological and non-radiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct, as defined in Section 11e.(2). Allowing a more flexible regulatory approach to stability monitoring will give States or the NRC a greater ability to work with operators such that stability monitoring can be done for a period of time that best fits a site's specific geology, while still protecting public health, safety, and the environment. The duration of long-term stability should be determined by site-specific conditions, not an arbitrary fixed term or national standard, and should consider items such as formation buffering capacity, oxidation/reduction state, and other geochemical properties. Additionally, discontinuance of long-term stability monitoring should be based on geochemical model validation along with demonstration of stability, and not a prescribed period. Although the lengths of monitoring periods might vary from site to site under this alternative, it would still establish the process that regulators and industry would follow to set adequate monitoring periods. That general process would allow science to drive the individual regulatory decisions and would constitute a protective "standard of general application" for stability monitoring.

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<sup>2</sup> EPA-HQ-OAR-2012-0788-0273 page 5-2

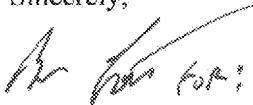
The Honorable Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
40 C.F.R. Part 192

### C. Conclusion

In conclusion, the WYDEQ respectfully requests that the EPA withdraw the Proposed Rule and engage in dialogue with the states on the need for a rule. The WYDEQ believes that the current regulatory format and process is protective of health, safety, and the environment and has been time tested by the state and the EPA. Arbitrary monitoring schemes should not replace evidence-based science in a field with over 40 years of operational history. The proposed monitoring requirements in the Proposed Rule do little if anything to further the EPA's stated goals in this matter. The rule as proposed will only add duplicate regulatory requirements and financial and human resource drain for both the state and industry. Therefore, this rulemaking does not create any quantifiable benefit for public health, safety, or the environment.

The WYDEQ appreciates the opportunity to comment on the Proposed Rule, and appreciates the outreach that has been extended to the state. We look forward to working closely with the EPA on this issue.

Sincerely,



Todd Parfitt  
Director

Cc: Kyle Wendtland  
Mike McGrady