DRAFT

Listed below are suggested items for discussion with the Environmental Protection Administration Region VIII Administrator (Mr. Doug Benevento) at the August 16, 2018 Uranium Industry Committee meeting with key talking points:

- **Revision of 40 CFR Part 61 Subpart W to remove any regulation of any fluid retention impoundments (evaporation ponds, water storage ponds etc.) and heap leaching, converting it back to the original December 15, 1989 rule that solely regulated uranium mill tailings disposal or rescinding it in its entirety and incorporation necessary requirements into existing Nuclear Regulatory Commission (NRC) regulations as was done with Subparts I and T**
    - Revisions for fluid retention impoundments are unneeded since fluid retention impoundments are already regulated under the basic groundwater protection standards imposed by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E (48 FR 45926; October 7, 1983) and by 10 CFR Part 40 Appendix A criterion 5.
    - Revisions for heap leach facilities are unnecessary since heap leach piles
    - The revisions are not commensurate with the risks that they intend to regulate.
    - 40 CFR Part 61 Subpart W is a NESHAP intended to regulate emissions to the air specifically radon from uranium mill tailings impoundments. Radon emissions from fluid retention impoundments are minimal. This has been proven through testing. Groundwater protection is already addressed in 10 CFR part 40 Appendix A Criterion 5.
    - For some operators the revised rule is unworkable as written and enforced.
    - The Agency is attempting to regulate crystalline precipitates on the sides of evaporation ponds as if they were exposed tailings. Crystalline precipitates do not behave like tailings.
    - A letter was prepared by the National Mining Association (NMA) to Daniel Schultheisz regarding implementation of the new rule (March 20, 2017 - Daniel Schultheisz letter). He replied via e-mail stating, "... *that on first glance, he does "not see anything that appears problematic or inconsistent" with EPA's thinking but that he will take a closer look and let me know if he needs further discussion.*" He has no subsequent contact with the National mining Association (NMA)
    - This Subpart could be rescinded as was Subparts T and W following incorporation of needed requirements into existing Nuclear Regulatory Commission (NRC) regulations.
- **Aquifer exemptions, specifically acceptance of the previously proposed use of Public Land Survey System (PLSS) boundaries (the nearest quarter/quarter corner at least 1/4 mile from the monitor well ring) to define aquifer exemption boundaries and streamlined approval of minor changes to those boundaries.**
    - The boundary should be, "*The right to mine; but no more than the area within the monitor well ring plus a distance to the next quarter quarter (¼ ¼) section boundary that is at least one quarter (¼) mile from the monitor well ring.*"

- Environmental Protection Agency's (EPA's) Guidance Document for the Area of Review Requirement (May 1985), states that *"A State program should use all available resources at its disposal to incorporate flexibility, the use of hydrologic intuition, and past experience to guide the AOR process"*
- The considerable experience of in-situ uranium recovery facilities in Wyoming demonstrates that in fact providing a quarter mile aquifer exemption area or "buffer zone" beyond the monitor well ring provides necessary operational flexibility without endangering potential Underground Sources of Drinking Water (USDWs).
- A boundary based upon the Public Land Survey System (PLSS) is easier/simpler to define

- **Memorandum of Understanding between EPA and NRC on "generally acceptable standards" under UMTRCA.**
  - The October 9, 2002, the Memorandum of Understanding (MOU) entitled *CONSULTATION AND FINALITY ON DECOMMISSIONING AND DECONTAMINATION OF CONTAMINATED SITES* should be revised to include both uranium recovery sites under direct Federal jurisdiction and those under Agreement State jurisdiction.
  - Uranium recovery sites regulated by Agreement States should also be excluded from CERCLA because there remains overriding Federal authority over these sites.
    - Section 83 of the Atomic Energy Act requires final Nuclear Regulatory Commission (NRC) release of these sites following final decommissioning, groundwater restoration and reclamation.
- **Withdrawal of the 40 CFR Part 192 rulemaking**
  - This rulemaking is unnecessary for the following reasons:
    - In-sItu uranium recovery poses very low risks. The magnitude of this rulemaking is not commensurate with the very low risks posed by in-situ uranium recovery
    - In-situ uranium recovery occurs entirely within exempted portions of aquifers.
    - No aquifer exemption has ever been rescinded.
    - *DATA ON GROUNDWATER IMPACTS AT THE EXISTING ISR FACILITIES - NRC-075* - Submitted: June 20, 2014 - ADAMS Accession Number: ML14172A092 states:
      - "*... the staff is unaware of any situation indicating that: (1) the quality of groundwater at a nearby water supply well has been degraded; (2) the use of a water supply well has been discontinued; or, (3) a well has been relocated because of environmental impacts attributed to an ISR facility.*
    - Existing adequate Federal regulation:
      - 10 CFR part 40 Appendix A Criterion 5B(5) adequately regulates groundwater restoration
    - Existing State regulation (Wyoming)
      - The Environmental Quality Act (Title 35 Public Health and Safety Chapter 11) requires groundwater restoration in 35-11-428 a()(ii)(H)
    - This rulemaking could be replaced with a Memorandum of Understanding (MOU) between the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC).