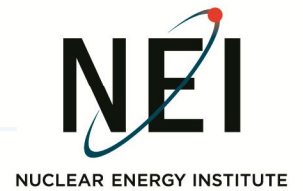


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November 5, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Subject:** Nuclear Energy Institute<sup>1</sup> (NEI) Additional Comments on Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Proposed Rule; EPA Docket ID Number EPAHQ-OAR-2012-0788; FRL-9909-20-OAR RIN 2060-AP43, 80FR4156

Dear Administrator McCarthy:

On January 26, 2015, the Environmental Protection Agency (EPA) issued a Federal Register Notice (80 FR 4156) soliciting public comments on the EPA's proposal to add new health and environmental protection standards to regulations promulgated under the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA" or "The Act."). Specifically, the EPA is proposing to add an additional subpart within 40 CFR 192 to explicitly address groundwater protection at uranium in-situ recovery (ISR) operations. NEI submitted our initial comments expressing our concern with the proposed rule on May 27, 2015.

Subsequent to our original submittal NEI has evaluated additional information regarding the process used by the EPA in developing the proposed rule. Our concerns are substantively the same as those stated in the October 30, 2015 letter submitted by the National Mining Association in that:

- Unlike other recent rulemakings, the EPA failed to consult industry stakeholders and state regulators who have more than forty years of experience regulating in situ recovery (ISR) uranium operations
- EPA provided its Science Advisory Board (SAB) incomplete and inaccurate information. Specifically:
  - According to NRC staff, the EPA claimed an "excursion was movement of ISR production fluids outside the exempted aquifer." However, excursions are only indicators of the unintended movement of production fluids toward the ring of monitoring wells.

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<sup>1</sup> The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

The requirement to detect and report excursion events allows for corrective action to be taken *before* fluids impact surrounding groundwater sources. For example, a 2009 NRC review of three ISR facilities found 60 excursion events. Most were short-lived events and none resulted in environmental impacts.<sup>2</sup>

- EPA failed to provide the SAB with NRC restoration reports and other data. The NRC shared valuable restoration data for three ISR sites where the NRC approved the restoration. Unfortunately, the EPA failed to share this information with its SAB. When asked why the EPA did not share the files, EPA responded that “the files were too large.”<sup>3</sup>
- EPA ignored NRC’s concerns about the scope and practicality of EPA’s rulemaking. While the EPA does have standard-setting authority under the Uranium Mill Tailings Radiation Control Act (UMTRCA), the NRC is charged with implementation of such standards. The proposed EPA rulemaking goes far beyond setting standards. For example, the EPA proposed a new requirement for 30 years of post-restoration groundwater monitoring – a time period that would typically be set by the NRC. Not only did the NRC express concern that the 30 years was longer than necessary, the NRC noted that the alternative modeling option proposed by the EPA calls for an “unattainable standard” and “may not be implementable in a meaningful way.”<sup>4</sup>
- EPA provided no evidence to contradict the 2009 NRC staff assessment that found no groundwater impacts from ISR uranium facilities. According to the 2009 NRC staff memo:

*“Routine regional aquifer monitoring programs are conducted by the existing ISR facilities as a license condition. The data from those monitoring programs do not show impacts attributable to the ISR facility. 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 impacts attributed to an ISR facility.”*<sup>5</sup>
- EPA failed to consider key recommendations from the SAB. In a February 2012 letter, the SAB urged the EPA to “survey the extensive monitoring data available for ISL uranium mines to identify data sets suitable for building an evidence base that could inform EPA’s regulations.”<sup>6</sup> Unfortunately, EPA failed to follow that recommendation – there is no evidence EPA conducted a review of the reams of available data maintained by NRC and state regulators.

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<sup>2</sup> NRC staff assessment of groundwater impacts from previously licensed in-situ uranium recovery facilities, July 10, 2009 (<http://pbadupws.nrc.gov/docs/ML0917/ML091770187.pdf>).

<sup>3</sup> House Oversight and Government Reform Committee letter, October 6, 2015.

<sup>4</sup> Ibid.

<sup>5</sup> NRC staff assessment, July 10, 2009.

<sup>6</sup> Letter from Dr. Debra Swackhamer, Chair, Science Advisory Board and Dr. Bernad Kahn, Chair, Radiation Advisory Committee, Science Advisory board to EPA Administrator Lisa Jackson, February 17, 2012 (EPA-SAB-12-005).

The Honorable Gina McCarthy

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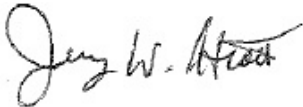
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- EPA did not accept an offer from the Texas Commission on Environmental Quality and the industry to sample current and former wellfields. While existing data should obviate the need for EPA's proposed rule, to the extent the EPA continues to have concerns about long-term stability of groundwater surrounding ISR projects, the industry is willing to work with the EPA to collect additional data. In a May 2015 letter to the EPA, the industry supported a recommendation made by the Texas Commission on Environmental Quality to sample a series of groundwater wells surrounding current and former ISR uranium recovery projects where historical baseline records exist. Unfortunately, EPA never responded to this offer.

In view of this new information NEI respectfully requests that the EPA withdraw the proposed rule and terminate this rulemaking proceeding.

We thank you for the consideration of our request and if you have any questions or require additional information, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Jerry W. Hiatt". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Jerry W. Hiatt, CHP