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April 26, 2007

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
BY E-Mail (pdf) ATTACHMENT**

Stephen Johnson, Administrator
Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
johnson.stephen@epa.gov

7432
OFFICE OF THE
EXECUTIVE SECRETARAT
2007 MAY -3 PM 12:49
RECEIVED

Re: Notice of Intent to Sue for Failure to Review National Emission Standards for Radon Emissions from Operating Mill Tailings, 40 CFR Part 61, Subpart W

Dear Administrator Johnson:

This Notice of Intent to Sue ("NOI") is filed on behalf of Rocky Mountain Clean Air Action ("RMCAA") and Colorado Citizens Against Toxic Waste ("CCAT") and provides formal notice of the intention to initiate litigation to compel the Environmental Protection Agency ("EPA") and the EPA Administrator to remedy the failure to review and, if appropriate, revise National Emission Standards for Radon Emissions from Operating Mill Tailings.

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EPA
OGC/CCU

RMCAA and CCAT request that EPA remedy these violations described herein as soon as possible and would welcome discussions with EPA regarding the terms of a binding agreement between EPA and the groups that could resolve this matter without resort to lengthy litigation.

Should EPA be unable to timely remedy these violations, the groups do intend to initiate litigation suit sixty days from the date of this letter, or shortly thereafter, under Section 304 of the federal Clean Air Act ("CAA"), 42 USC § 7604, for the failure to perform a non-discretionary duty set forth in 42 USC § 7412(q)(1). The suit will seek injunctive relief, declaratory relief, the cost of litigation, and other relief.

The mandatory requirements are set forth at 40 CFR Part 61 Subpart W, 40 CFR § 61.250 et seq., Section 112(d) of the Clean Air Act as Amended ("CAAA") and with Section 112(q)(1) of the CAAA. Section 112(q) of the CAAA states that any National Emission Standard for Hazardous Air Pollutants in effect before the date of enactment of the CAAA "shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990."

National Emission Standards for Radon Emissions from Operating Mill Tailings were promulgated December 15, 1989, before the Clean Air Act Amendments of 1990. See, 54 Fed. Reg. 51703. Since that time, the Administrator and the EPA have not reviewed these regulations to determine if it is appropriate to revise them to comply with the requirements of Section 112(d) of the CAAA. It has now been nearly 17 years since the enactment of the CAAA of 1990.

The National Emission Standards for Radon Emissions from Operating Mill Tailings, which were promulgated nearly 18 years ago, apply to owners or operators of facilities licensed to manage uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their tailings. The standards limit radon-222 emissions from operating uranium mill tailings pile to no more than 20 picocuries per square meter per second. Recent reports, however, indicate that this standard may not adequately protect human health from radioactive mill tailings.

Radon is a serious health hazard and is carcinogenic. According to the EPA, 21,000 people die annually due to lung cancer caused by radon.¹ Adverse health effects, particularly due to emissions from tailings at uranium mills, have been noted even at levels below the current standard of 20 picocuries per square meter per second. The EPA itself states that, "There is no safe level of radon—any exposure poses some risk of cancer."² The current standard in fact allows radon emissions to exceed background levels, which are estimated at between 0.003 to 2.6 picocuries per square meter, by more than 10 times.³

Additionally, existing uranium mills have been able to maintain emissions of radon-222 below the current standard of 20 picocuries per square meter per second. A uranium mill operated by Cotter Corporation in Cañon City, Colorado, for example, has reported radon-222 emissions ranging from 6.2 picocuries per square meter per second to 18.7 picocuries per square meter per second.⁴ Records on file with the EPA also indicate that the White Mesa uranium mill in Utah has maintained radon-222 emission levels at 15.5 picocuries per square meter per second.⁵ Clearly technology exists to further reduce emissions of radon from operating uranium mill tailings to safer levels well below current standards. EPA studies such as the January 2006, study on "Technologically Enhanced Naturally Occurring Radioactive Materials From Uranium Mining" continue to confirm the presence of radon-222 as a "principal concern to human health and the environment."⁶ Nonetheless, the radon emission standards have not been revisited since 1989 despite the mandates of the CAAA.

The CAAA at 42 USC § 7412(q)(1) requires that National Emission Standards for Hazardous Air Pollutants in effect before enactment of the CAAA must be reviewed and, if appropriate, revised within ten years. This is a nondiscretionary duty under the CAAA. It has been nearly 17 years since the enactment of the CAAA and the Administrator and the EPA have yet to review and, if appropriate, revise National Emission Standards for Radon Emissions from Operating Mill

¹ See, <http://www.epa.gov/radon/images/402-r-03-003.pdf>.

² See, <http://www.epa.gov/radiation/radionuclides/radon.htm#inbody>.

³ See, <http://www.atsdr.cdc.gov/toxprofiles/phs145.html>.

⁴ See attached radon flux measurement reports filed with the Colorado Department of Public Health and Environment.

⁵ See attached finding of compliance from EPA.

⁶ See, <http://www.epa.gov/radiation/tenorm/pubs.htm>.

Tailings. This, despite the fact that current standards allow unsafe and unhealthy levels of radon to be released into the air and the fact that uranium mills can clearly meet more stringent standards that are more protective of air quality. Thus, EPA and the EPA Administrator have failed to perform a nondiscretionary duty under the CAA.


The full name and address of the persons giving the notice are:

Rocky Mountain Clean Air Action, 1536 Wynkoop, Suite 302, Denver, CO 80202,
Colorado Citizens Against ToxicWaste, PO Box 964, Canon City, CO 81215-0964.

Both groups and their members are actively involved and deeply committed to the protection of the air and health of their communities against the deadly pollution that is associated with uranium milling and the disposal of uranium tailings. Both groups would welcome EPA action to address the serious matter of carcinogenic radon emissions from operating uranium mills.

Again, it appears that there may be ample opportunity to resolve this matter without resort to protracted litigation. If you would like to discuss this matter further, please contact me at the addresses indicated above or feel free to call me at (970) 375-9231.

Sincerely,


s/Travis E. Stills

Travis E. Stills
Managing Attorney
Energy Minerals Law Center