

## Subpart W Quarterly Conference Call April 5, 2012

### **Attendees**

EPA: Angelique Diaz, Region 8, Reid Rosnick, ORIA

ENVIRONMENTAL GROUPS: Jennifer Thurston (Sheep Mountain Alliance), Sarah Fields (Uranium Watch)

INDUSTRY: Oscar Paulson (Kennecott), R. Ellis (Energy Fuels), Jim Cain (Cotter), Toby Wright (Wright Environmental)

OTHER: Travis Stills (Energy Minerals Law Center)

### **Discussion**

*Reid*

Update on Final Agency Review (FAR).

Gina McCarthy (Assistant Administrator for the Office of Air and Radiation) provided comments – a sound economic analysis is need for this rule. Worked into the preamble in ~1 month, workgroup review of the language added. FAR scheduled for 4/19/12. Last point for internal cross agency review of action. Forum for confirming that workgroup successfully completed its job and confirming that rulemaking package is complete and ready for Office of Management and Budget (OMB) review and all agency and external requirements have been met. Hoping for concurrence without comment and expecting concurrence with comment from OGC (minor). Ready for OMB for review at end of April. 90 days in OMB when acknowledged receipt of package.

New timeline (will be added to the website):

To OMB – end of April

Proposed Rule Published in Federal Register - ~ Mid September

### **Questions**

*Sarah Fields:* How will rule address “many problems” at conventional mill tailings?

*Reid:* In our review we looked at whether or not there are technologies available more than what we currently have in the existing rule. We did those determinations and that will be in the rule. Documents we used are in the website in terms of analyses of engineering capabilities for conventional impoundments. The Proposed Rule is making it clear that evaporation ponds at any facility that holds Uranium byproduct is subject to Subpart W and we are looking at standards at those facilities. Regulating heap leach as well and looked at requirements for minimizing ground water contamination as well as radon emissions. Looked at how we can increase protection at conventional impoundments and heap leach piles.

*Oscar Paulson:* Risk assessment released was from radon and radon only. You are also talking about risks from ground water contamination and minimizing those through engineering techniques. Haven't seen a risk assessment for ground water. What are you going off of to determine the GW risks and how to minimize them?

*Reid:* The risks for ground water will be looked at in a separate rule, the UMTRCA review. Reference rulemaking in 12/1989 where various methods to minimize radon were looked at we set double liner requirements to protect ground water. That's as far as we are going in this rulemaking, leaving the rest to Part 192 workgroup.

*Oscar:* that makes sense because can see the work getting tangled quickly if looked at by both workgroups.

*Reid:* Ground water may be dealt with in 192 standards. We make reference in Subpart W for double liners.

*Sarah Fields:* Understanding that newer impoundments there is a 40 acre limit do not have to measure radon releases during life of impoundment. Is that true and will it change?

*Reid:* True. That has been true since 1989. For impoundments before 1989, they were required to measure radon flux. Any impoundment that came into existence after 12/15/1989 had to follow one of 2 work practices – continuous or phased disposal. When you speak of 40 acres, you are talking about the phased disposal, which allows for 2 impoundments of 40 acres or less.

*Sarah:* When exactly does a uranium tailings impoundment become operational? Regulations refer to going into closure, but sometimes tailings impoundments will sit for decades without going into closure. Seems like facility has to state to NRC (or Agreement State) that they are going into closure with and approved reclamation plan and milestones. Examples – Ticaboo site hasn't gone through final closure. Currently, at White Mesa mill they have 4 operating impoundments. Think it is a serious situation when regulators allow disposal at additional tailings impoundments when previous impoundments have not entered into closure. White Mesa currently in violation of Subpart W regulations, in my opinion, brought to attention of EPA R8 and Radiation Control Program in UT. Last issue is whether or not these mill tailings impoundments are major sources and subject to Title V process. EPA fell short of responsibilities in CAA, supposed to take a look at radionuclides and determine what major facilities are. Obvious that tailings facilities are major sources of HAPs, as are underground mines. Utah has a poorly implemented Rad NESHAPs program, which can be corrected if uranium recovery facilities are designated as major sources. There are many problems with Subpart B and now Subpart W in Utah. This can be partially solved by designating Subpart B and W sources as major sources.

*Reid:* Recognize there were issues with operation, standby, closure definitions. Agree, we need a clear cut line when a facility is in operation and when it goes into closure. Attempting to address this in the proposed rule. Not getting into Subpart B, because not purpose of the call.

With respect to Subpart W, we pointed you in direction of UT DAQ since they have authority. We also have said that we are looking into them and making sure the regulations are followed.

*Sarah:* Under CAA, EPA didn't make a determination on what is a major facility for radionuclides. Not unreasonable to request that a determination of major source be made during the rulemaking.

*Reid:* You are correct that it has not been done. If we use the criteria for all other emission sources (25 TPY) then the uranium recovery facilities do not meet that criteria so under existing rule not classified as a major source.

*Sarah:* So there needs to be rules specifically designed for radionuclides, since it's an apples and oranges situation.

*Travis Stills:* I would think that this would be looked at as part of this review. Also should be looked at for Subpart B. Don't see any technical documents on the website and no information on any economic data on the website. Standing complaint and disappointing. Discussed during settlement providing a full and open availability of materials that EPA is considering. Can only assume that you've done nothing since no information has been provided. Repeating complaint. Completely unacceptable that EPA is out of date by 22 years of protecting the public. There are some people that have used these proceeding to shield not open up the process. No effort by EPA that we were agreed upon. Under wraps. Don't seem to be based on anything besides emails. If it's not on the website, I assume it does not exist. Assume industry will attack proposed rule as not having enough information and the public wants to be supportive.

*Reid:* As stated in past, many of documents, as OGC attempted to explain on numerous occasions, many documents are deliberative and not at liberty to release them.

*Travis:* Think you are abusing this.

*Reid:* Sorry you feel that way. Refer you to Susan Stahle. Can't argue legal arguments, but can only tell you what I am bound to do by our regulations and policy.

*Travis:* Purpose of the quarterly calls was to have an open process. My feedback is that there is no data, no met deadlines, no compliance with what congress told you to do in 1990. Reason for this call is to raise that point. I'll deal with it in other ways I see. Some in EPA not honoring the reason for the call.

*Reid:* Thank you for your comment.

*Jennifer Thurston:* Can we revisit the major source issue? Can someone help me understand the 25 TPY and why Blanding mill doesn't fit those requirements.

*Reid:* If this is a follow up from a S. Fields question, her issue is that phased disposal allows for two impoundments and she feels there are 4 rather than 2. Is that your question?

*Jennifer:* No, just wanted to clarify the 25 TPY and find information and understand better with respect to revision when it comes out later this year.

*Reid:* Can look at pCi/m<sup>2</sup>-s flux data and do a straight calculation.

*Angelique:* 25 TPY is a very large number for radon-222 emissions. A tailing impoundment would have to be incredibly large to emit 10 TPY of radon-222. No facility is anywhere near this.

*Sarah:* Are considered to be major sources of air pollutants but these are for non-radioactive sources and they have to have a permit from UT DAQ. When I was asking for a designation for major source I was talking about Subpart W. Two different issues, all U mills should be major sources under subpart W, EPA should correct that. Standard should that all mills are major sources. Not confusing, difficult, or unreasonable. Subpart B – uranium mine and mill proposed together, how would radon emissions from mill and mine be worked out since they have the same air space. White Mesa – how do you take into account the radon emissions from tailings impoundment to consider off site dose. EPA needs to look at mill as a whole, not the way it's done now with several requirements. In license renewal process it was difficult to sort out and understand how owners of White Mesa mill use radon flux data from Cells 2 and 3, and have other 2 cells.

*Oscar:* One quick comment. You mentioned determination of exposure from mill and impoundments, want to point out that exposure to radionuclides, include Radon and decay products, from any licensed by uranium recovery is governed under 10 CFR Part 20 which limits does to any member of the public to 100 mrem. That is covered in NRC regulations.

*Sarah:* Issue comes up in how they measure/calculate that. Becomes quite an issue when you get down into the nitty gritty of how that is calculated/measured.

*Oscar:* NRC released a draft reg guide for comment that outlines specific acceptable methods

*Reid:* Example you used on mill/mine site, such as what may be proposed for Virginia.

Anything within the facility boundary would be used to determine if major source – mine, impoundments, and if over cutoff then would look at as a major source.

*Sarah:* Would they add up all emissions to determine dose to nearest resident if there are two different standards. What would they use? Don't think EPA has ever looked at this.

*Reid:* you are probably right and may be confounded by what vents are operated. A complex situation that I'm sure we will be looking at.

*Sarah:* time to bring this up is now.

*Reid:* you are correct. We've been in contact with the state of VA. If VA allows then they will have to rewrite their regulations.

*Sarah:* this is federal. It would be EPA and NRC.

*Reid:* We have the opportunity to sit down with VA to figure out how to do that. This wasn't our charge in Subpart W but we will look at it and have been thinking about these things. There are a number of options available and we will look at them. Agree that sooner is better than later. We want to make sure we are proactive; these ideas and concepts are being discussed.

*Sarah:* Thank you.

*Reid:* Next Call is July 5<sup>th</sup> at 11AM EDT. Hopefully more news on the status of Subpart W. Happy to take calls or emails. Remember emails for questions are on the website. Number of ways to contact me. Feel free to call or email at any time.