



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

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October 7, 2003 (1:41PM)

Secretary  
U. S. Nuclear Regulatory Commission  
Attn: Rulemaking and Adjudications Staff  
Washington, D.C. 20555-0001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dear Sir or Madam:

The U.S. Department of the Interior has reviewed the U.S. Nuclear Regulatory Commission's (NRC) proposed rulemaking on the state of Utah's alternative standard to use their existing groundwater regulations in lieu of the NRC regulations.

The proposed rule addresses Utah's use of alternative groundwater protection standards for uranium mills and 11e.(2) byproduct material disposal facilities. The Utah Department of Environmental Quality (UDEQ), Division of Radiation Control, proposes to regulate a portion of the groundwater aspects of uranium milling. Part of the determination for this proposed rule is the level of protection for public health, safety, and the environment. The U.S. Fish and Wildlife Service (FWS), briefly reviewed the proposed rule and contacted the UDEQ, for additional information.

We have no comments on the particular issue being permitted, in that groundwater under direction of UDEQ for uranium mill tailing sites will be treated in the same manner and standards as groundwater in the remainder of Utah. It appears that protection of groundwater should be equal to or better than under NRC standards, and equal in protection under standards required by the Environmental Protection Agency (EPA).

The FWS perceives a possible issue pertaining to whether the existing EPA and NRC Standards are adequately protective of trust resources. As an example, if selenium in the groundwater were less than the standard of 50 ppb, thus meeting the drinking water standard, and if this water surfaced and provided water to a wetland, the effect on trust birds nesting at this wetland

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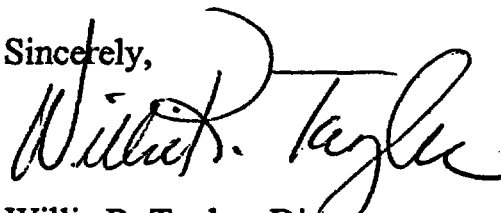
would likely be reproductive impairment. It is not clear if or how these sites would be permitted, monitored, or corrected. However, for the majority of the state, this situation already exists and is not substantially changed by this proposed rule. We believe that provisions exist in Utah's regulations to address these problems should they arise, especially if a strong degree of coordination continues between UDEQ, and the FWS.

Similarly, another issue is that although concentrations are addressed under Utah, NRC, and EPA standards, loads are not addressed. It would appear that in some situations, concentrations of contaminants in groundwater may meet standards, but there may not be controls on volume (or load) released, again a potential issue if the groundwater surfaces.

Finally, we note that a determination has not been made on whether the Federal government, and the FWS specifically, will have as much influence in discharge permits issued by the state, versus those issued by another Federal entity. The FWS should be consulted when applications for discharge permits are reviewed for possible impacts on resources under their authorities, e.g. the Endangered Species Act, the Migratory Bird Treaty Act, and Section 404 of the Clean Water Act.

The Department of the Interior appreciates the opportunity to comment on this proposed rulemaking. If we can be of further assistance, please contact Mr. Bruce Waddell, FWS, Region 6, Salt Lake City, Utah, at (801) 975-3330, extension 125.

Sincerely,

A handwritten signature in black ink, appearing to read "Willie R. Taylor". The signature is fluid and cursive, with a large initial "W" and "T".

Willie R. Taylor, Director  
Office of Environmental Policy  
and Compliance