

**ENVIRONMENTAL ASSESSMENT
FOR AN EXEMPTION TO THE PART 40 COMMENCEMENT
OF CONSTRUCTION REQUIREMENTS**

**LOST CREEK ISR, LLC
PROPOSED URANIUM IN SITU RECOVERY FACILITY
SWEETWATER COUNTY, WYOMING**

March 25, 2010

PREPARED BY:

**U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF FEDERAL AND STATE MATERIALS AND
ENVIRONMENTAL MANAGEMENT PROGRAMS
DIVISION OF WASTE MANAGEMENT AND ENVIRONMENTAL PROTECTION**

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I.0 INTRODUCTION

By letter dated July 2, 2009, Lost Creek ISR, LLC (the Applicant) submitted an exemption request (LCI, 2009a) to the U.S. Nuclear Regulatory Commission (NRC). The Applicant seeks an exemption from the “commencement of construction” provisions of 10 CFR § 40.32(e) for certain site preparation activities described in its exemption request. The Applicant’s underlying request for a new source materials uranium milling license regarding its proposed in situ recovery (ISR) facility (LCI, 2008) is still under NRC review.

The NRC staff is considering issuing an exemption to the Applicant that would grant the July 2, 2009, request, in part. The exemption would authorize the Applicant to undertake certain site preparation activities for its proposed Lost Creek ISR operations before a decision is made on whether to authorize uranium milling. Granting this exemption would not mean that the NRC has decided to issue a 10 CFR Part 40 operating license to the Applicant. The Applicant would be undertaking these site preparation activities with the risk that its license application may later be denied. The NRC has prepared this Environmental Assessment (EA) in support of this exemption in accordance with 10 CFR § 51.21. Based on this EA, the NRC is making a finding of no significant impact regarding the exemption request.

A draft of this EA was published in the *Federal Register* for public comment on November 9, 2009 (74 FR 57712). The NRC received comments from three organizations, Powder River Basin Resources Council (PRBRC, 2009), Wyoming Outdoor Council (WOC, 2009), and Lost Creek ISR, LLC (LCI, 2009b). Table 1 presents the comments and the associated NRC staff responses.

2.0 BACKGROUND

The commencement of construction provisions of 10 CFR § 40.32(e) date back to 1972, when they were initially codified by the NRC as part of a comprehensive rulemaking pertaining to all facilities licensed under Parts 30, 40, 50 and 70 (37 Fed. Reg. 5745 (Mar. 21, 1972)). The amendments made to Parts 30, 40, 50 and 70 were initiated to make the NRC’s regulations consistent with the National Environmental Policy Act (NEPA) (37 Fed. Reg. at 5746).

These regulatory provisions remained unchanged until after the passage of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Pursuant to UMTRCA, the NRC in 1979 added to 10 CFR 40.4 the terms “uranium milling” and “byproduct material,” defined to include ISR facilities. To ensure that the commencement of construction provisions remained uniform among all plants and facilities in which byproduct, source, and special nuclear material are used and possessed, the NRC in 1980 amended its regulations in Parts 30, 40, 70 and 150 – which included revising 10 CFR § 40.32(e) -- to require that the NRC’s NEPA review be completed prior to authorizing any uranium milling activities (45 Fed. Reg. 65521 (Oct. 3, 1980)). The commencement of construction provisions in Parts 30, 40, 70 and 150 remain largely unchanged today. Section 40.32(e) states that, with some limited exceptions, “commencement

of construction” prior to license issuance is grounds for license denial, and further states in relevant part as follows:

The term “commencement of construction” means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

However, in 2007, the NRC completed a rulemaking amending the regulations applicable to limited work authorizations for nuclear power plants (LWA rulemaking), which included a consideration of issues pertaining to preconstruction and site preparation work performed by Part 50 (and Part 52) licensees and applicants (72 Fed. Reg. 57416 (Oct. 9, 2007); corrected at 73 Fed. Reg. 22786 (Apr. 28, 2008)). As part of that rulemaking, the NRC modified the scope of activities that are considered construction and for which a construction permit, combined license, or LWA is necessary; specified the scope of construction activities that may be performed under an LWA; and changed the review and approval process for LWA requests. Prior to the NRC’s issuance of a construction permit or combined license, a LWA allows a Part 50 (or Part 52) applicant to engage in certain site preparation activities that would otherwise be considered construction. The LWA activities could be either safety-related or non safety-related. After noting that the Atomic Energy Act of 1954, as amended (AEA) does not require an applicant to obtain permission before undertaking site preparation activities that do not implicate radiological health and safety or common defense and security, the NRC developed a revised definition of construction that excluded certain preparatory activities.

In doing so, the NRC examined the nature and extent of its NEPA responsibilities. The NRC determined that its NEPA obligations and responsibilities arise only when the NRC undertakes a “Federal” action, and that NEPA, a purely procedural statute, does not expand the NRC’s jurisdiction beyond the scope of the AEA (72 Fed. Reg. 57416, 57427 (Oct. 9, 2007)). Regarding the site-preparation activities excluded from the LWA definition of construction, the NRC noted that such activities do not have a reasonable nexus to radiological health and safety or the common defense and security, and as such, were “non-Federal actions.” Accordingly, these site preparation activities are not subject to the requirements of NEPA because they are not within the scope of the NRC’s AEA authority. Therefore, as part of its LWA rulemaking, the NRC amended its 10 CFR Part 51 NEPA regulations to include a definition of construction there that was consistent with the definition added to § 50.10. Site preparation activities that were deemed not to have a direct nexus to radiological health and safety were listed in 10 CFR § 51.4 as activities not included within the “construction” definition. On this point, 10 CFR § 51.4 states, in relevant part, that “construction” does not include:

- Site exploration, including necessary borings to determine foundation conditions or other reconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;
- Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

- Erection of fences and other access control measures;
- Excavation;
- Erection of support buildings (such as, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;
- Building of service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

The NRC's determination that certain site preparation activities did not constitute "construction" impacted the scope of the agency's NEPA review of such activities. The NRC clarified that because these site preparation activities lacked a reasonable radiological nexus to radiological health and safety and/or common defense and security -- and thus did not require NRC approval or oversight -- these activities were not Federal actions within the context of NEPA. The NRC further provided that the effects of these non-Federal actions would only be considered in the agency's environmental review to that extent necessary to establish an environmental baseline against which the incremental effect of the NRC's subsequent major Federal action (i.e., issuance of a license) would be measured (see 72 Fed. Reg. 57416, 57427 (Oct. 9, 2007)).

While the NRC had previously recognized the need for uniformity in carefully approving conforming amendments when it modified the "commencement of construction" provisions in 1980, no conforming amendments were made in Parts 30, 40 and 70 when the LWA rule was finalized in 2007. Ever since, as is evident from the regulatory text quoted above, the NRC's "commencement of construction" provisions in Parts 30, 40 and 70 have been inconsistent with the Part 51 "construction" definition. Activities that do not constitute construction under 10 CFR Parts 50/52 and 51, are viewed as construction under 10 CFR Parts 30, 40 and 70. Site preparation actions that a materials license applicant or licensee cannot engage in -- absent an exemption -- are the same actions that the NRC determined in the LWA Rulemaking were not within the scope of the agency's licensing review under the AEA. In short, while 10 CFR 40.32(e) specifically cites the need to perform a Part 51 environmental analysis, the terms of §40.32(e) are now inconsistent with Part 51 as modified by the LWA rulemaking. Unless and until this inconsistency in the regulations is corrected, the NRC staff will review exemption requests to consider whether site preparation activities will be permitted before a uranium milling license is issued.

3.0 PROPOSED ACTION

The NRC proposes to grant an exemption that will allow the Applicant to conduct certain site preparation activities that are currently not considered to be "construction" activities under 10 CFR § 51.4, notwithstanding the 10 CFR § 40.32(e) provisions discussed above. The scope of the Applicant's July 2, 2009 exemption request includes the following 10 items. The NRC staff, in its Technical Evaluation Report (TER) on the safety aspects of the exemption request, approves each item on the list as an exempted activity except for part of Item 2 and all of Item 9.

1. Leveling and surfacing of the area around the Plant and Maintenance Building.
2. Constructing the Plant and Maintenance Buildings

As discussed in the TER, the construction of office and maintenance buildings is approved as an exempted activity. But the construction of plant buildings where radioactive materials will be processed has a nexus to radiological health and safety, and the exemption request pertaining to such construction is therefore denied.

3. Installing household septic systems for the Plant and Maintenance Buildings.
4. Installing fence around the Plant and Maintenance Building Area.
5. Upgrading Existing Road Access from the West to the Plant.
6. Upgrading Existing Road Access from the East to the Plant.
7. Installing Fence for Early Wellfield Area.
8. Installing Power Line to the Plant and Maintenance Buildings and Drillers Shed.
9. Drilling and Casing Up to Four Deep Wells

As discussed in the TER, the installation of these proposed wells has a nexus to radiological health and safety because LCI plans to use them to dispose of liquid 11e.(2) byproduct material. Exemption request 9 is therefore denied.

10. Constructing a Drillers Shed and Staging Area.

4.0 PURPOSE AND NEED FOR THE PROPOSED ACTION

The need for this action arises from the short construction season due to weather, which can cause significant construction delays after obtaining a license. Pursuant to 10 CFR 40.14, the NRC must determine whether to approve, approve in part, or disapprove the exemption request. Disapproval of the exemption request is the no-action alternative.

Approval of the exemption request, in whole or in part, does not mean that the NRC will approve the Applicant's source material license application nor does it mean that approval of the license application will be more likely. Thus, upon any approval of the exemption request, the Applicant will proceed at its own risk.

5.0 SCOPE OF REVIEW

This EA is being prepared pursuant to 10 CFR § 51.21, which states, "[a]ll licensing and regulatory actions subject to this subpart require an environmental assessment..." The only two exceptions to this rule are those actions requiring environmental impact statements, and those that are categorically excluded or identified as otherwise not requiring environmental

review pursuant to § 51.22. Exemptions are not currently covered by any categorical exclusion, and, therefore, an EA is required for this action.

6.0 ALTERNATIVES

The no action alternative is to not grant the exemption and not allow the Applicant to engage in any site preparation activities before an operating license is issued. If the NRC does not grant the exemption, the Applicant would need to wait until a decision is made on its license application request.

7.0 IMPACTS OF THE NO-ACTION ALTERNATIVE

There are no environmental impacts of not granting the exemption.

8.0 IMPACTS OF THE PROPOSED ACTION

In preparing this EA, the NRC staff reviewed the Applicant's exemption request to determine if the requested activities fall within one of the categories of site preparation activities that are not "construction" under 10 CFR § 51.4. As indicated in Sections 2.0 and 3.0, the staff intends to exempt only those activities that, pursuant to 10 CFR 51.4, are not "construction," and do not constitute a Federal action. The impacts of those activities allowed by this exemption, which are not considered to be "construction" under 10 CFR 51.4, are not evaluated in this EA, for the reasons discussed in Section 2 above. However, as reflected in Section 12 below, the staff plans to condition any exemption approval so as to protect endangered species and cultural and historic resources from the effects of site preparation activities.

The environmental impacts of the ten sets of actions set forth in Section 3 above will be evaluated as direct impacts in the supplemental environmental impact statement (SEIS) being prepared for the Lost Creek site. The SEIS evaluation (a draft of which was published for comment on December 11, 2009), is based in part on information provided by the Applicant in its environmental report (ER). The ER was submitted as part of the Applicant's underlying request for a uranium milling license, which pre-dated its exemption request and thus did not distinguish between impacts not considered to be a result of the Federal action under consideration and the overall impacts it was discussing. It was, therefore, more efficient to evaluate the impacts without making this distinction for purposes of the SEIS. Ordinarily, impacts of non-Federal site preparation activities would be evaluated as cumulative impacts in any subsequent SEIS published in connection with the proposed issuance of an NRC uranium milling operating license. Including those impacts in the SEIS for efficiencies sake, however, does not mean that they are required to be evaluated for purposes of issuing the requested exemption.

9.0 OTHER FEDERAL AND STATE AGENCIES

Several regulatory agencies will be directly involved with the review and approval of site preparation activities at the proposed Lost Creek project, as well as later construction activities. The U.S. Bureau of Land Management (BLM) will require that a Plan of Operations and associated National Environmental Policy Act document be submitted and approved before allowing any disturbance greater than five (5) acres (BLM, 2009). Part of this process entails a bond estimate to be submitted to BLM for approval. BLM currently oversees the protection of

cultural resources and will continue to do so under all future construction and operation activities. BLM will also regulate the site preparation activities, which are approved for exemption, and will address the potential impacts to endangered species.

The Wyoming Department of Environmental Quality (WDEQ) will also have significant oversight of the construction activities through its mine permit process. The Permit to Mine application submitted to WDEQ in December 2007, describes the facility as it is intended to be constructed. The site preparation activities described in the July 2 exemption request will not commence until the Permit to Mine (PM) is issued by WDEQ, or unless such activities are approved as part of a Drill Notification or other authorization.

10.0 AGENCIES CONSULTED

The NRC staff has consulted with the Wyoming State Historic Preservation (WYSHPO Office), the U.S. Fish and Wildlife Service (FWS), the BLM, and the WDEQ regarding the site preparation activities referenced in this EA. The response from the Wyoming SHPO indicated that the project may proceed with the stipulation that if any cultural materials are discovered during construction, work shall cease immediately (WYSHPO, 2009). The staff will condition the exemption accordingly. The BLM requested text changes to Section 9.0, which have been incorporated (BLM, 2009). The FWS referenced the previous information provided to the NRC staff in a letter dated November 12, 2008 (FWS, 2009). The FWS also provided information regarding distribution power line construction, which has been included as Attachment 1 to this EA.

11.0 CONCLUSIONS

This EA meets the requirements of 10 CFR § 51.21. The purpose of this review was to describe the proposed action and alternatives to the proposed action. Impacts associated with the site preparation activities not considered to be part of “construction” per 10 CFR 51.4 have not been evaluated for the reasons discussed above. The NRC staff concludes there will be no significant environmental impacts caused by the Federal action considered in this EA. The Federal action here is the approval of the requested exemption, which is based on the definition of “construction” under 10 CFR 51.4. The staff’s environmental analyses are governed by 10 CFR Part 51. An EA was completed to reconcile the administrative discrepancy in the NRC’s regulations. Therefore, the staff determined that this EA supports a finding of no significant impact. Additionally, as reflected below, the staff’s approval will be conditioned to ensure that endangered species and cultural and historic resources are protected.

12.0 PROTECTIVE CONDITIONS

As part of its safety review of the July 2 exemption request, the NRC staff plans to condition any exemption approval to ensure that endangered species and cultural and historic resources are protected. As drafted, these conditions include the following:

1. All construction associated with the proposed development will be completed in compliance with the National Historic Preservation Act of 1966 (as amended) and its implementing regulations (36 CFR Part 800), and the Archaeological Resources Protection Act of 1979 (as amended) and its implementing regulations (43 CFR Part 7). In order to ensure that no unapproved disturbance of cultural

resources occurs, any work resulting in the discovery of previously unknown cultural artifacts shall cease. The artifacts shall be inventoried and evaluated in accordance with 36 CFR Part 800, and no disturbance shall occur until the Applicant has received authorization from NRC to proceed.

2. All construction restrictions will be adhered to, as required by the Wyoming Department of Environmental Quality, the U.S. Bureau of Land Management, and the U.S. Fish and Wildlife Service regarding disturbances to endangered species habitat.

13.0 REFERENCES

1. Lost Creek ISR, LLC; Application for a Source Materials License; October 30, 2007; (ADAMS Accession No. ML073190539).
2. Lost Creek ISR, LLC; Resubmitted Application for a Source Materials License; March 20, 2008; (ADAMS Accession No. ML081060525).
3. Lost Creek ISR, LLC, 2009a; Exemption Request to Allow Pre-Licensing Activities; (ADAMS Accession No. ML091940438).
4. Lost Creek ISR, LLC, 2009b; Letter to U.S. Nuclear Regulatory Commission Regarding Draft EA; (ADAMS Accession No. ML).
5. U.S. Fish and Wildlife Service, Letter to U.S. Nuclear Regulatory Commission, November 13, 2009 (ADAMS Accession No. ML093290194).
5. Wyoming State Historic Preservation Office, Letter to U.S. Nuclear Regulatory Commission, December 10, 2009 (ADAMS Accession No. ML093440852).
6. U.S. Bureau of Land Management. Letter to U.S. Nuclear Regulatory Commission, October 28, 2009 (ADAMS Accession No. ML093090467).
7. Powder River Basin Resources Council, Letter to U.S. Nuclear Regulatory Commission Regarding Draft EA, December 9, 2009 (ADAMS Accession No. ML093451425).
8. Wyoming Outdoor Council, Letter to U.S. Nuclear Regulatory Commission Regarding Draft EA, December 9, 2009 (ADAMS Accession No. ML093440560)

Attachment 1
U.S. Fish and Wildlife Service
Recommendations for Minimizing Bald Eagle Mortalities
on Distribution Power Lines.

Power lines should be built, at a minimum, to standards identified in the *Suggested Practices for Raptor Protection on Power Lines--The State of the Art in 2006* (Avian Power Line Interaction Committee 2006) to minimize electrocution potential. The Service has the following more specific recommendations that reaffirm and compliment those presented in the Practices. The Nuclear Regulatory Commission should ensure that these additional standards, to minimize bald eagle mortalities associated with utility transmission lines, are incorporated into the stipulations for all project actions. It should be noted that these measures vary in their effectiveness to minimize mortality, and may be modified as they are tested in the field and laboratory. Local habitat conditions should be considered in their use. The following represents areas where bald eagle protection measures should be applied when designing/constructing new distribution lines or modifying existing facilities:

For new distribution lines and facilities

1. Bury distribution lines where feasible.
2. Use raptor-safe structures (e.g., with increased conductor-conductor spacing) that address adequate spacing for eagles (i.e., minimum of 60 inches).
3. Insulate the bushing conductor terminations and use covered jumper conductors.
4. Make jumper conductor installations (e.g. comer, tap structures, etc.) eagle safe by using covered jumpers or providing adequate separation.
5. Employ arrestor and cutout covers when necessary.
6. Avoid high avian use areas such as wetlands, prairie dog towns, and grouse leks.

For modification of existing facilities

1. Identifying and rectifying problem structures that include dead ends, tap or junction poles, transformers, reclosers and capacitor banks or other structures with less than 60 inches between conductors or a conductor and ground.
2. Cover exposed jumpers.
3. Cap pole top ground wires.
4. Maintain a sixty inch clearance between energized conductors and guy wires.
5. Install insulated bushing covers, covered jumpers, and cutout covers and arrestor covers, on transformers if necessary.
6. In areas where midspan collisions are a problem, install line-marking devices that have been proven effective. All transmission lines that span streams and rivers, should maintain proper spacing and have markers installed.

Reference

Avian Power Line Interaction Committee (APLIC). 2006. *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, CA.

Table 1
Public and Agency Comments and USNRC Responses

This table presents comments received and associated responses regarding this draft EA. Where multiple organizations issued similar comments, the organizations were combined as one commenter.

No.	Commenter	Comment	Response
1	Wyoming State Historic Preservation Office (SHPO)	The SHPO recommended that the exemption not be approved until the USNRC has completed consultation per Section 106 of the NHPA.	The NRC staff provided the WYSHPO with additional information regarding the location of site preparation activities and cultural/historic resources. Based on that information, the WYSHPO, provided its concurrence that the project may proceed.
2	U.S. Bureau of Land Management	Text correction to Section 9.0 of the EA	The staff made the request correction.
3	U.S. Fish and Wildlife Service	Provided guidelines for utility pole construction to protect bald eagles.	These guidelines have been incorporated into the final EA, as Attachment 1.
4	Powder River Basin Resources Council	Allowing companies to proceed with construction activities without a license will create significant impacts to public health and the environment and would subvert the NEPA process the NRC must comply with when issuing a license.	An NRC license is not required to authorize the site preparation activities covered by the exemption being issued. Such activities do not have a direct nexus to radiological health and safety, but will be subject to regulatory oversight by other agencies (e.g., BLM and WDEQ). Furthermore, as stated in the final EA, the site preparation activities will be undertaken at the applicant's risk that its license application may later be denied.
5	Powder River Basin Resources Council	Purpose and need only states that the applicant requests to perform certain activities. The purpose and need statement is not merely a formality. The NRC is not fulfilling its NEPA responsibility to demonstrate a public need.	The staff agrees that the purpose and need statement is not a mere formality. The staff does not agree that this EA fails to meet its NEPA responsibilities, and the asserted duty to demonstrate a "public need" for the project finds no basis in the NRC's Part 51 NEPA regulations. The Applicant is a private entity, and under 10 CFR 40.14, the NRC must determine whether to approve, approve in part, or deny the Applicant's exemption request regarding the 10 CFR 40.32(e) "commencement of construction" provisions. Approval of the exemption request, in whole or in part, does not mean that the NRC will approve the Applicant's source material license application, nor does it mean that approval of the license

No.	Commenter	Comment	Response
			application will be more likely. The BLM will be undertaking its own NEPA analysis of these activities as part of its review of LCI's plan of operations.
6	Powder River Basin Resources Council	<p>The consultation process must be complete before the final EA is issued and any comments those agencies have regarding potential impacts to those resources must be integrated into the final document.</p> <p>Consultation with BLM and the Wyoming Game & Fish Department (WGFD) is particularly important. This project falls within a sage-grouse "core area" designated by the Governor of Wyoming's Executive Order. Any uranium development in the area could be significantly curtailed as a result of the Executive Order and WGFD guidance.</p>	Consultation with the Wyoming Game and Fish Department was not necessary for this particular EA, due to the reason stated in the EA. The sage grouse issue is being addressed as part of the environmental review for the regulated activities, and the BLM is reviewing the sage grouse issue for the exempted activities as required for the Plan of Operations approval.
7	Wyoming Outdoor Council and Powder River Basin Resources Council	<p>The impacts of the proposed action have not been analyzed. This is a blatant failure to comply with NEPA's requirements and must be corrected in the final EA. NRC cannot postpone its NEPA responsibilities by referencing an SEIS that has not yet been finalized. The EA is contrary to NEPA case law (e.g., <i>Sierra Club v. Peterson</i>, 717 F.2d 1409 (1983); <i>Davis v. Mineta</i>, 302 F.3d 1104 (2002).</p>	In response to these and other comments, draft EA sections 2 and 8 have been revised to better articulate the reasons why impacts of site preparation actions lacking a nexus to radiological health and safety need not be evaluated by the NRC at this time. Such non-Federal actions are not within the NRC's NEPA authority as set forth in 10 CFR Part 51. The NEPA case law cited by the commenter is not controlling here. For example, <i>Davis v. Mineta</i> involved the proposed construction of a 5-lane interstate highway through the middle of a public park entailing the movement or destruction of several historic structures, in which the court ruled that the agency's FONSI was arbitrary and capricious. <i>Sierra Club</i> involved the issuance of oil and gas leases on National Forest land, and the agency had failed to perform any site

No.	Commenter	Comment	Response
			specific NEPA analysis before authorizing the major federal action (<i>i.e.</i> , issuing the leases).
8	Wyoming Outdoor Council	Commencement of construction prior to license issuance is not allowed.	While the commenter cites §40.32(e) in arguing this point, it does not address the 40.14 exemption provisions. As discussed in the draft EA, there is a conflict between §51.4 and §40.32(e). While certain activities fall within the §40.32(e) commencement of construction prohibition, these same activities are not considered construction under Part 51. Per §40.14, the agency can issue exemptions to specific regulations, and in this case, the exemption is rectifying a conflict in NRC regulations.
9	Wyoming Outdoor Council and Powder River Basin Resources Council	The proposed action, which would authorize project activities prior to NRC licensing violates NEPA.	The staff disagrees with this comment. The proposed action is consistent with the NRC's Part 51 NEPA regulations.
10	Wyoming Outdoor Council and Powder River Basin Resources Council	The EA fails to evaluate the environmental impacts of the proposed action. The NRC cannot authorize the proposed action until it has completed the SEIS.	As set forth in the EA, site preparation actions such as fencing, building roads, installing power lines, and erecting support buildings are not "construction" as defined in 10 CFR 51.4, and need not be the subject of an NRC NEPA evaluation at this time. As reflected in the final EA, the impacts of these site preparation actions will be evaluated as direct impacts in the final SEIS for the Lost Creek site.
11	Wyoming Outdoor Council and Powder River Basin Resources Council	The proposed action may have an impact on important wildlife and plant resources. These issues are not discussed in the EA.	These impacts will be evaluated in the final SEIS for the Lost Creek site. As much of the site is on BLM land, BLM will be reviewing impacts to wildlife and plant resources before approving land disturbance activities. As the activities being exempted are not within the NRC's jurisdiction, the staff is not required to assess impacts to these resources. However, impacts to ecology and wildlife will be addressed as part of the NRC's SEIS being prepared for the Lost Creek site.