



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

APR - 4 2014

Ref: 8EPR-N

Mr. Aby Mohseni, Deputy Director
Environmental Protection
and Performance Assessment Directorate
Division of Waste Management and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission (Mail Stop T8D3)
Washington, D.C. 20555-0001

RE: Ross In-Situ Leach Recovery (ISR) Project Final
Supplemental Environmental Impact Statement (Final
SEIS), CEQ #20140059

Dear Mr. Mohseni:

The U.S. Environmental Protection Agency Region 8 has reviewed the Ross ISR Project, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities prepared by the U.S. Nuclear Regulatory Commission (NRC). Our comments are provided for your consideration pursuant to our responsibilities and authority under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609. Section 309 of the Clean Air Act directs the EPA to review and comment in writing on the environmental impacts of any major federal agency action.

The EPA Region 8 office provided comments on the Draft SEIS on May 13, 2013. The EPA rated the Draft SEIS EC-2 (environmental concerns – insufficient information). We recognize and appreciate the revisions made in the Final SEIS to address our concerns and the concerns of others. This letter clarifies the applicability and requirements of the EPA's regulations in 40 CFR Part 61 Subpart W which are not specifically addressed in the Final SEIS. We also have provided our concerns related to the reconfigured Contaminant Barrier Wall and clarifications on the EPA's UIC regulatory roles related to the project.

Background

The NRC staff prepared the Final SEIS to evaluate the potential environmental impacts of Strata Energy Inc. proposal to construct, operate, conduct aquifer restoration, and decommission the Ross ISR Project. The proposed Ross Project will be located 21.5 miles north of the town of Moorcroft, Wyoming and would encompass approximately 1,721 acres. The Ross Project area includes approximately 40 acres of BLM-administered surface land. The Bureau of Land Management (BLM) is a cooperating agency.

Impoundments and Subpart W

We appreciate that the Final SEIS (Section 1.6.2) indicates that prior to conducting uranium-recovery operations, the “Applicant is required to obtain all necessary permits and approvals.” We are aware that the licensee is taking the initial steps towards obtaining the EPA’s surface impoundment construction approval. To assure that approvals are required, we recommend that draft NRC license condition 12.1 be modified to state that “the licensee shall obtain all necessary permits, licenses, and **approvals** from the appropriate regulatory authorities,” (emphasis added).

The 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart A – General Provisions (Subpart A) and Subpart W National Emissions Standard for Radon Emissions from Operating Mill Tailings (Subpart W) have specific requirements that apply the Ross ISR project surface impoundments. We recognize the surface impoundments as described in the Final SEIS Section 2.1.1 include double liners and leak detection. This Final SEIS section also mentions: (1) the NRC draft license condition 12.16 that requires the Applicant to submit for the NRC’s review and approval, a ground water detection monitoring plan, and (2) the Wyoming state regulations that require a wastewater pond construction permit. As outlined in the paragraphs below, the EPA also has an approval role for the impoundment construction. Similar to the other approvals described in Final SEIS Section 2.1.1.1 and those listed in Final SEIS Table 1.2, we recommend the Record of Decision and final license clarify the requirement for the EPA approval of construction of the surface impoundments under Subpart W. The requirements of Subpart A and W are further explained in the following two paragraphs.

Subpart W applies to “owners or operators of facilities licensed to manage uranium byproduct material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.” (40 CFR 61.250). Subpart W defines “uranium byproduct material or tailings” as “the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content” (40 CFR 61.251(g)). Thus, any type of uranium recovery facility that is managing uranium byproduct material or tailings is subject to Subpart W. Based on the information contained in the Final SEIS, the EPA has determined that the requirements of Subpart W specifically apply to the surface impoundments at the proposed Ross ISR uranium recovery facility that are used to contain the uranium byproduct material. This includes all impoundments or ponds where uranium byproduct material is stored or treated.

Subpart W allows for two surface impoundments that are each no more than 40 acres in area and meet the requirements of 40 CFR 192.32(a). Subpart A requires owners or operators to submit to the EPA an application for approval for either construction or modification of Subpart W regulated structures before the construction or modification is planned to commence. (40 CFR 61.07). As you are aware, the EPA is considering revisions to 40 CFR Part 61, Subpart W. For more information visit <http://www.epa.gov/radiation/neshaps/subpartw/rulemaking-activity.html>

Containment Barrier Wall (CBW)

The Final SEIS describes a new configuration of the CBW. Instead of being constructed around approximately 2/3 of the facility, the CBW is now proposed to be constructed only along the southern facility boundary. With this new design it becomes critical that the CBW is located in the right place and

is sufficient length to prevent shallow groundwater flow beneath the facility. Since Figure 2.5 has not been updated, it is difficult to evaluate the CBW placement. Additionally, monitoring to assure that groundwater is not moving around the ends of the barrier wall into the facility area is advisable.

UIC Roles

There are three places where Final SEIS Table 1.2 does not accurately depict the EPA's roles or actions. The first line in Table 1.2 suggests that the EPA approved the underground source of drinking water (USDW) aquifer exemption. This is true, but only for the Class III injection. We recommend it is clarified in the ROD or license that the EPA's approval was only for the Class III injection wells.

Further in the same table, the EPA is listed as the issuing agency for an "Aquifer Exemption Permit for the Class 1 Injection Wells." However, the EPA may provide the aquifer exemption approval to Wyoming Department of Environmental Quality (WDEQ) only if the aquifer is shown to be a USDW and an exemption is needed. The aquifer exemption is not a permit, so we recommend the ROD clarify that the EPA's action is an approval. In the same table section, the aquifer reclassification for the Class III injection wells is listed with the EPA being the issuing agency. The aquifer reclassification is not issued by the EPA, but is a WDEQ action. Again, we suggest the ROD provide the correct agency for this action.

We hope our comments on the Final SEIS provide insight regarding project regulatory requirements and the EPA's responsibilities. If you have any questions or would like to discuss our comments, please contact me at (303) 312-6704 or Lisa Lloyd, of my staff, at (303) 312-6537 or email at lloyd.lisa@epa.gov.

Sincerely,

Philip S. Strobel
Acting Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation

cc: Johari Moore, NRC (Mail Stop, T8-F5)