

Subpart W Stakeholders Conference Call October 1, 2015

ATTENDEES

EPA: Reid Rosnick, Dan Schultheisz (ORIA)

Environmental/Tribal Groups: Sharyn Cunningham, CCAT; Sarah Fields, Uranium Watch; Jennifer Thurston, INFORM; Scott Clow, Tomo Nattori, Ute Mountain Ute Tribe

Other: Travis Stills, Energy Minerals Law Center (EMLC)

UPDATE

Reid began the call with a welcome and by taking attendance, and then had a couple of items to share.

We continue responding to comments, while working on portions of the preamble and final rule language.

The workgroup met on September 29. We discussed progress on the analytical blueprint. We welcomed a new workgroup member from the Office of Air Quality Planning and Standards. We are still trying to secure a workgroup member from the Office of Solid Waste and Emergency Response who has experience in RCRA. **NOTE:** There was confusion by a stakeholder on whether the minutes to the Workgroup meeting should be considered non-privileged and placed on the Subpart W website. These minutes are Privileged, Internal Deliberations by EPA, and as such, will not be on the website.

We also have a new web address for the Subpart W website. The changes were made as part of an Agency-wide effort to improve the function and look of the entire website. The new address is

<http://www2.epa.gov/radiation/subpart-w-rulemaking-activity>

DISCUSSION

Sarah: I believe with all the illegality in the proposed rule EPA should start all over with a new rule. There are errors and I feel like I've run into a brick wall. There needs to be an investigation into how EPA has conducted this rulemaking.

Sharyn: I'm disappointed with the entire process. I hope there will be changes in the final rule.

Reid: I can't give more of a description of our process at this point because we are in the middle of writing the final rule. Sarah, the point of a proposed rule is to get comment, and see if there is anything we missed. We then make changes to the final rule. It's a good process.

Travis: This process is not working. EPA even asked us for rule language at the public hearing last year. (NOTE: EPA is on record as inviting any interested party to propose rule language that would address its concerns; we did not receive such language from EMLC.)

Travis: Not true. You can say more, but you choose not to.

A period of discussion not related to the rulemaking ensued. It was explained to Travis again that if he has legal questions, he should call Susan Stahle (EPA OGC) separately so as not to take up time for the other stakeholders on the call.

Sharyn: I'm disappointed that Susan Stahle is not on the call.

Sarah: It was difficult getting to the website. There is no obvious link to the Subpart W site.

Reid: I will pass that information along to the Communications staff. (NOTE: the message was passed and the staff is looking into the issue. EPA guidelines for the new Agency websites require a standard look and feel, which affects the way in which individual program offices can link to specific topical areas. It was determined, however, that an email was sent on September 17, 2015 by Tony Nesky of the Radiation Protection Division to a number of stakeholders, including those on this call, announcing the new website and providing direct links to Subpart W materials. This email will be posted on the website.)

Sarah: I used your data and your contractor's equation to get the radon release values for White Mesa. If the answers are wrong, it's your incompetence, not mine. My results show that your equation and assumptions were incorrect, because you didn't get the real data, and now you are trying to avoid admitting it. This is a big concern, no one seems to care. Region 8 needs to do more oversight of the Utah DAQ.

Reid: As I have explained before, we have received a significant number of comments on this issue, some similar to yours claiming that radon emissions are underestimated, and others agreeing with the view that saturated tailings have very limited emissions. We are continuing to evaluate these comments and will respond to them at the time the final rule is issued.

Travis: I have looked at the email collection and it is not a full record. I urge you to place all documents from your contractor on the site. If the contractor is acting as EPA's agent to collect information, EPA should have all these communications. From the documents that have been posted, it appears EPA accepted Cotter's denial of information. Why? EPA has the ability to require regulated entities to provide that information.

Reid (After Sharyn later made a similar request, and also asked why we did not act against Cotter's refusal to provide data to EPA): I will look into contractor documents and report back. With respect to not pursuing Cotter's refusal to provide information, here is our response:

NOTE: We were looking for information to plug into a risk assessment we did not use for the rulemaking. We instead decided to use the GACT approach. The Cotter facility is in closure, and it is also a CERCLA site. It is beyond regulation by Subpart W (see 79 FR

25393). The data in question was not necessary to the assessment (see 79 FR 29395). This is why we did not pursue any type of enforcement action. Reid is still looking into the contractor documents.

Sharyn: We made quite a number of comments during the public hearings last year. Were those captured? Are they being considered as written comments?

Reid: Yes, there was a court reporter at all four public hearing sessions. Transcripts are in the docket and these are considered as public comments. The docket number is EPA-HQ-OAR-2008-0218.

Sarah: Someone needs to report Radium data to the Utah DAQ. EPA has wasted a lot of money on this rulemaking with bad data. In evaluating ISL facilities, EPA only listed 5 facilities. That is not enough.

Sarah: The Ute Mountain Ute Tribe sent a letter to EPA requesting consultation and asking for answers to its technical questions. How is EPA responding? UMUT did not find consultation to be satisfactory.

Reid: EPA did hold a consultation meeting with the UMUT in July 2014. The Tribe has sent two letters regarding additional consultation and its technical comments. The response to the second letter was sent last week and will be posted on the website. In both letters, EPA expressed willingness to meet with the Tribe, but emphasized that we cannot provide final answers or resolution to comments until the final rule is issued.

Scott: Apologized for being late to the call and asked for a recap of the hour. Then asked if EPA is using scientific data and people to work on the rule. Reid said yes. Scott said Energy Fuels has reestablished their perimeter radon monitoring system. Reid asked Scott if he knew of results of the monitoring. Scott said no. Scott said the Tribe is beginning to work with Energy Fuels again. The good news is that Roberts Pond no longer exists. It has been closed and the Tribe is making certain that no contamination exists.

Tomo: Expressed frustration that the technical people from the Tribe have not had a chance to discuss technical issues with EPA's technical people. The Tribe has worked long and hard to gather this data.

Reid: EPA is happy to meet with the Tribe to discuss these issues, but we may not be able to give satisfactory answers to you until after the final rule.

Jennifer: I look forward to seeing the final rule and I expect it to look different.

Scott: Utah DAQ will be preparing their license for White Mesa, and there may be discrepancies with Subpart w.

Reid: EPA will talk to Utah DAQ.

No Further Comments

Next call: Thursday, January 7, 2016 at 11 AM Eastern Time.

end
