

Subpart W Quarterly Stakeholder Conference Call October 6, 2016

PARTICIPANTS

EPA

- Dan Schultheisz, Radiation Protection Division
- Tony Nesky, Radiation Protection Division
- Sonja Rodman, Office of General Counsel

Citizens Groups

- Sarah Fields, Uranium Watch
- Aaron Mintzes, Earthworks
- Kathy Van Dame, Wasatch Clean Air Coalition

Other Government

- Donovan Porterfield, Los Alamos National Laboratory
- Kevin Siebert, State of Washington, Dept. of Health
- John Saxton, Nuclear Regulatory Commission

UPDATE

Dan opened the meeting by telling the group that the draft final rule went over to the Office of Management and Budget at the end of July and remains in interagency review. EPA has received consolidated interagency comments. Since the comments were consolidated, EPA doesn't know which agency said what. Responses to the OMB comments are in internal review.

Dan told the group that Earthworks, the Sierra Club, Uranium Watch, Natural Resources Defense Council, and CCAT had met with OMB about the Subpart W rule. Energy Fuels and the National Mining Association had also met with them recently. EPA was invited to these meetings as a courtesy. OMB posts summaries of these meetings, including any handouts provided by the meeting requestors, on its RegInfo website (<http://www.reginfo.gov>). [NOTE: As of October 11, it does not appear that OMB has posted summaries of these three meetings. Dan has a call in to OMB.]

Dan said that at this point EPA is working to resolve issues that OMB has raised, and hope that will clear the rule out as soon as possible. Hopefully that will be by the end of the month, so that EPA can get signature by end of the year.

It typically takes about two weeks after signature to get the rule published in the Federal Register. EPA will post the signed rule on our website before the official version is published in the Federal Register.

QUESTIONS

Ms. Fields asked what happens after EPA issues the rule in the Federal Register: when will the rule be effective?

Dan answered that there will be an effective date in the rule. It is typically 30 to 60 days after publication. This will affect implementation. He did not recall the exact time frame, but said it would be effective early in the next year, assuming it is signed this year.

Ms. Fields asked if OMB reviewed the proposed rule and signed off on it. Dan replied that they did review it, and the issues raised by other agencies were addressed to the point that the proposal could go forward.

Ms. Fields then asked if EPA let people know that they could approach OMB about the proposal in 2014. Dan replied that he did not know what was said by EPA at the time, but there were similar meetings when the proposal was at OMB. He said that there was a meeting with the NMA, and believed that there was one other (but may be misremembering, as EPA also had its proposed rule related to in-situ uranium recovery at OMB in 2014). These meetings should be noted on the OMB website. There was the opportunity for people to talk to OMB and talk to them about their concerns. [UPDATE: Only one such meeting, with industry groups on November 13, 2013, is listed on OMB's website. See https://www.whitehouse.gov/omb/oir/2013/11/13/industry_meetings.]

Ms. Fields noted that people would not have known the specifics. Dan answered that they would not know the specifics, but there was the opportunity to discuss general concerns, and to let OMB know what is working and what should be changed. There is always the opportunity for groups to discuss how they believe certain issues should be addressed. Because the review of Subpart W was a review of an existing rule, there was a better chance to understand how EPA might amend it.

Ms. Fields said that until the draft rule was published, we had no idea that the EPA would try to eliminate the radon measurements based on false information on the existing impoundments. She said we didn't know how bad the rule was and how it violated the Clean Air Act. Dan replied that people could not know about that, but that people could comment on the specifics during the comment period.

Ms. Fields asked if EPA will still have these calls after the rule is issued or whether this call will be the last. Dan answered that he did not know. These calls are part of the settlement agreement, and will take place until the rule is signed. The next call will be scheduled for January 5, at the same time and call-in number, because there is no guarantee that the rule will have cleared OMB and been signed by that time. EPA will consider holding the next call if even if the rule is out, in order to let people ask questions about the rule. He said EPA will be able to be much more forthcoming about the rule and how we addressed comments.

Ms. Fields thought it would be helpful to have a call in in January and the quarter after that to get feedback from those individuals who have been involved. Her personal opinion is that the draft rule was shocking in its incompetence, in its general failure to get backup information from

licenses. She said that EPA developed a formula to calculate emissions from liquid surfaces and didn't use it. She said that EPA didn't know that Shootaring Canyon didn't have a lined impoundment, that EPA didn't know that Sweetwater had an impoundment of more than 40 acres. She said that when EPA requested info from the White Mesa mill, it failed to use its authority to get a response, and failed to even use publicly available information. She said that this reaffirms the feeling, that EPA, particularly EPA Region 8, failed to enforce the original rule, but when that became apparent, it was too late to challenge. She said that people are hoping that the final rule will be a bit better, and assumes that EPA is prepared for legal challenges.

Dan said he appreciated Ms. Fields honesty and said that EPA recognizes that it always needs to prepare for a legal challenge.

Mr. Mintzes asked when did OMB send comments the rule and asked whether EPA could characterize interagency comments. Dan replied that EPA received comments a few weeks earlier. He said that he could not get into specifics. In general, an important issue addressed by the proposal was clarifying the question on when impoundments are operating for purposes of Subpart W, and some comments touched on aspects of that issue. Mr. Mintzes said that his group commented on the issue of when impoundments should be subject to Subpart W.

CLOSING

Dan said that EPA will schedule the next call for January 5, 2017, at the same time and telephone number. He noted that EPA should be up to date on posting non-privileged emails after getting a little behind. EPA should now have everything posted through August, and we should have September's up on the web soon. He said that he will let the group know how things develop with OMB.

Next Call: Thursday, January 5, 2017 at 11 AM Eastern Time.