



May 1, 2017

Wyoming Department of Environmental Quality
Land Quality Division
200 W. 17th Street. Suite 10
Cheyenne, WY 82002
Submitted via: <http://lq.wyomingdeq.commentinput.com>

RE: Docket #17-4101, Regulations for the Land Quality Division's Uranium Recovery Program

Dear DEQ Staff and Environmental Quality Council Members:

Thank you for the opportunity to submit comments on the proposed regulations for the Land Quality Division's ("LQD") Uranium Recovery Program, designed to implement the Atomic Energy Act and its associated regulations in Wyoming to facilitate "agreement state" status.

Our organization has a long history of working on uranium projects in Wyoming, since the early days after our founding in 1973. In-situ uranium projects in Wyoming have caused a number of significant and long-standing environmental and socio-economic impacts. Similarly, Wyoming is no stranger to the boom and bust of the uranium market and has dealt with the environmental and fiscal legacy impacts of abandoned mines and mills for decades.

Our members live, work, and recreate in and around areas with uranium mining and milling, and our organizational interest is to ensure a robust regulatory system that will adequately protect the public and Wyoming's environment. It is with that interest in mind that we provide these comments.

Fee System

One of our main concerns with the proposed agreement state status continues to be the proposed fee structure. As stated above, uranium is an international commodity and is particularly subject to booms and busts. From our standpoint, uranium has been mostly in a bust with only short-lived and small booms. This means projects come in, get licensed, and then produce less than anticipated and in many cases they go idle – in some cases for years or more.

Chapter 7 of the proposed rules sets up the fee structure for the program. We are concerned that the proposed rules will not meet the statutory objective of W.S. 35-11-2005:

Fees.

(a) The department shall adopt a fee structure which accounts for the full cost of the program, including positions authorized by this article and other positions assessed to implement the program developed under this article.

While the fees associated with the initial license are straightforward, it is the ongoing annual fees that are concerning given the idle and inactive status of many uranium licenses in the state. These companies are not earning much revenue and therefore will not have much ability to pay. The beginning years of the program will be held up by “predetermined fees” which assumes each operator has an equal ability to pay. This may not be the case.

After these first years, we are equally concerned that the agency is proposing that “Once the Department establishes Projected Costs for a licensee, the licensee shall be assessed an annual fee based on the licensee’s average Total Costs from the previous two years of operation.” Given the idle and inactive status of many licenses, the fees could be quite low – in some cases it might just be the proposed minimum \$1,000 annual fee – and these fees will likely not be sufficient to stand up the program.

We ask that DEQ show its math, so to speak, to demonstrate that the program will be self-sustaining and will meet its statutory mandates. Until DEQ is able to do that, the Environmental Quality Council should not approve the regulatory framework for agreement state status.

Public Participation Opportunities

One of the main requirements of the Atomic Energy Act that Wyoming has to implement is opportunities for public participation. As the NRC is a federal agency it is subject to the National Environmental Policy Act. While Wyoming is not subject to NEPA as a state agency, DEQ must have similar public participation opportunities, especially in terms of review of environmental reports prepared by the license applicant and the agency.

We ask DEQ to ensure there are both informal and more formal opportunities for public participation on the license application and associated environmental reports. Individuals and/or organizations or local governments may wish to submit comments, or appear at a hearing in a limited way, as opposed to having to hire a lawyer and experts to be able to participate more formally. Our organization has engaged in uranium projects licensed by the NRC in both formal and informal ways and have found value in both types of processes.

We also note that the fees discussed above should cover any anticipated costs of hearings before the Environmental Quality Council and Council staff time to oversee the hearings. Given that we are one of the few entities (besides industry) that have been through an Atomic Safety & Licensing Board hearing process, we would be happy to give our perspective. In many cases, we fear the proposed regulations are not as detailed as the ASLB’s implementing framework and therefore will create confusion, especially given the lack of precedent at the beginning. The ASLB process is in some ways simplified from the normal EQC proceeding (for instance, it allows for pre-filed direct testimony and therefore negating the need for discovery) but in some ways it is more complex (for instance, by requiring amended and updated contentions filed at various stages surrounding the environmental reports). Regardless, it requires a multi-year commitment that creates insurmountable difficulties for most members of the public, therefore highlighting the need for less formal and less burdensome public participation opportunities.

Technical Concerns

We echo the concerns raised by Uranium Watch, especially in terms of incorporating definitions into the Wyoming regulatory framework that are not from federal regulations that have gone through notice and comment rulemaking.

We understand that adopting the NRC regulatory framework is complicated by the fact that NRC so heavily relies upon guidance documents, however, we are concerned that Wyoming is proposing to incorporate guidance into its formal regulations.

Thank you for considering these comments and we look forward to the agency's response.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

Shannon Anderson
Staff Attorney, Powder River Basin Resource Council