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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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December 14, 2017

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

I am writing to restate my concerns about EPA's proposed rule on ground water and in situ uranium recovery (ISR) under 40 C.F.R. Part 192. EPA initially issued its rule on January 26, 2015. In 2016, I wrote to the Office of Management and Budget (twice) questioning EPA's justification for the rule and its cost-benefit analysis and called on the Obama Administration to withdraw the rule. On January 19, 2017 – the day before President Obama left office – EPA issued a second proposed rule. Since then, I have come to learn that the Nuclear Regulatory Commission (NRC) has had – *from this rulemaking's inception* – serious concerns with EPA's proposals. I share NRC's concerns about EPA's rule and ask that you withdraw the rule.

The NRC has substantive and jurisdictional concerns about EPA's proposals. After EPA issued its 2015 rule, NRC Commissioner William Ostendorff asked NRC's General Counsel whether the rule reaches beyond EPA's authority to set "generally applicable standards" for ground water protection under the Uranium Mill Tailings Radiation Control Act (UMTRCA). On May 18, 2015, the General Counsel submitted a 20-page memo to the Commission stating, among other things, that if promulgated, the rule would reach beyond EPA's authority in key areas. The rule – rather than setting generally applicable standards – would impose implementation standards, which the Act delegates to the NRC, not EPA. At Commissioner Ostendorff's initiative, the Commission voted, in June of 2015, to authorize the General Counsel to convey both substantive and jurisdictional concerns to EPA. NRC's General Counsel did so in a July 28, 2015 letter.

After EPA repropoed the rule in 2017, the NRC elaborated upon its concerns. The NRC staff submitted 25 pages of comments on the rule to the Commission. With the knowledge and implicit consent of the Commission, the NRC staff submitted the comments to EPA on July 18, 2017. The comments explain that the NRC and its Agreement States "have been safely, securely, and successfully regulating ISR facilities since the 1970's." They state that "[i]n almost 40 years of operational experience, the NRC staff is aware of no documented instance of an ISR wellfield being the source of contamination of an adjacent or nearby aquifer, or of the non-exempt portion of the same aquifer in which ISR activities are being conducted." They explain that there is "No Health or Safety Justification for [the] Rulemaking." Finally, the comments detail how the rule "encroaches upon NRC's jurisdiction, and includes requirements that are not technically feasible or are unreasonably burdensome on...licensees without providing any equivalent benefit."

Since March 2011, prices for natural uranium have fallen by roughly 70 percent. In 2017,

uranium producers in the U.S. are on track to produce the lowest amount of uranium since 1951 – *before* the U.S. had commercial nuclear power reactors. It is incumbent upon EPA to refrain from imposing regulations that are not technically feasible or are unreasonably burdensome on licensees. While Commissioner Ostendorff noted that the NRC has the authority to deviate from EPA's regulations on a site-specific basis should EPA exceed its authority under UMTRCA, he stated that this approach could easily lead to continuing conflict between the agencies and court challenges to NRC's actions. In order to end such conflict, I ask that, in addition to withdrawing EPA's rule, you sign a Memorandum of Understanding with the Commission clarifying EPA's authority to set generally applicable standards and NRC's authority to implement the standards.

Thank you in advance for your consideration and I look forward to your prompt response.

Sincerely,



John Barrasso, M.D.
Chairman

Enclosures (4)