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UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF RADIATION CONTROL

In the Matter of:

July 25, 2014, Division of Radiation
Control Permit Order
White Mesa Mill
Radioactive Material License Number
UT 1900479
Energy Fuels Resources (USA) Inc.

Request for Agency Action and
Petition to Intervene

August 22, 2014

REQUEST FOR AGENCY ACTION AND PETITION TO INTERVENE

I. INTRODUCTION

1. Pursuant to Utah Code Ann. § 63G-4-207, Utah Code Ann. § 19-1-301.5(7), and Utah Admin. Code R305-7-204, Uranium Watch (Petitioner) respectfully submits the following Request for Agency Action (RAA) and Petition to Intervene. Petitioner files this Request and Petition to contest the Utah Division of Radiation Control (DRC) letter to Energy Fuels Resources (USA) Inc. (EFRI) of July 23, 2014 (Order)¹, that imposed

¹ Letter from Rusty Lundberg, Director, Utah Division of Radiation Control, to David Frydenlund, Senior Vice President General Counsel and Corporate Secretary Energy Fuels Resources (USA) Inc. Request to Cease Monthly Radon Flux Sampling Tailings Cell 2: Radioactive Material License Number UT 1900479, July 23, 2014; URC-2014-004489.

certain conditions and requirements on the White Mesa Mill, San Juan County, Utah (Radioactive Material License Number UT 1900479). *See* Exhibit A. The DRC imposed conditions on the White Mesa Mill License UT 1900479 via an Order, rather than an amendment to the License.

II. STATEMENT OF LEGAL AUTHORITY AND JURISDICTION

2. The July 23, 2014, DRC Order meets the definition of a “Permit order” in Utah Ann. Section § 19-1-301.5(e)(i)(D) and Utah Admin. Code R305-7-102(a)(1)(D), because the July 23 letter is an order that modifies or amends a permit. In this instance the Order imposed certain conditions on the White Mesa Mill and the Mill Licensee, EFRI. The July 23 DRC Order stipulates that:

- a. No additional radioactive materials or other waste be added to Cell 2;
- b. The license continue to measure the radon flux from Cell 2 in accordance with with 40 C.F.R. 61, Appendix B, Method 115, "Monitoring for Radon-222 Emissions" (2013);
- c. The measured radon flux for Cell 2 shall not exceed a value of 20 pCi/m²-sec until a new MILDOS-Area Model to analyze a higher radon flux is completed and compliance with dose limits based on the releases from the Mill has been demonstrated;
- d. As required by Method 115, a minimum of 100 measurements are required and shall be performed on a semi-annual basis;
- e. The measured results will be included in the Semi-Annual Effluent Monitoring Reports submitted to the DRC.

f. The first semi-annual measurement will take place during the 2nd half of calendar year 2014 and the results will be included in the Semi-Annual Effluent Report for July through December 2014.

g. The DRC shall be notified 30 days prior to any emissions test so that DRC may, at its option, observe the test;

h. This radon flux monitoring be included in the revised Environmental Monitoring Plan as per license condition 11.9 of your radioactive material license; and

i. The radon flux results will be shared with the Division of Air Quality. Therefore, the July 23 Order is a “Permit Order” that may be contested by filing and serving a written Request for Agency Action, pursuant to Utah Admin. Code R305-7-203 and R305-7-104(5). Also, the July 23 Order is a “Permit Order,” as defined in Utah Code Ann. Section 19-1-301.5(e).

3. Timeliness. Pursuant to Utah Admin. Code R307-7-203(5), to be timely, a Request for Agency Action to contest a Permit Order shall be submitted within 30 days of the date the Permit Order being challenged was issued. The Permit Order was issued July 23, 2014. This timely Request is being filed on August 22, 2014, within 30 days of July 23.

III. PETITIONERS INTEREST

4. Utah Code Ann. § 63G-4-207(1)(c) and Utah Admin. Code R305-7-204(1)(a) require a person who wishes to intervene demonstrate that the petitioner’s legal rights or interests are substantially affected by the agency action or that the petitioner qualifies as

an intervenor under any provision of law. Utah Code Ann. § 19-1-301.5(7)(c)(ii) requires that the petitioner demonstrate that the petitioner's legal interests may be substantially affected by the permit review adjudicative proceeding and that the interests of justice and the orderly and prompt conduct of the permit review adjudicative proceeding will not be materially impaired by allowing the intervention. Utah Code Ann. § 19-1-301.5(7)(c)(ii) (C) and Utah Admin. Code R305-7-204(1)(a) also require that the petitioner's request for agency action raise issues or arguments preserved in accordance with Utah Code Ann. § 19-1-301.5(4) (which requires that the petitioner has provided sufficient public comments to preserve the right to intervene or contest an agency order).

5. With regard to standing, the ability to meet any of the following three tests set forward by the Utah Supreme Court in *National Parks & Conservation Ass'n v. Board of State Lands*, 869 P.2d 909, 913 (Utah 1993) confers standing as a full party:

a. **Distinct and Palpable Injury Test:** This test recognizes standing where there is: (1) the existence of an adverse impact on the plaintiff's rights; (2) a causal relationship between the governmental action that is challenged and the adverse impact on the plaintiff's rights; and (3) the likelihood that the relief requested will reduce the injury claimed.

b. **Public Issues Test:** This test recognizes standing if: (1) no one else has a greater interest in the outcome; (2) the issues are unlikely to be raised at all unless that particular plaintiff has standing to raise the issues; and, (3) the legal issues are sufficiently crystallized to be subject to judicial resolution. The rationale underlying this standard is that important issues regarding the lawfulness of governmental action ought to be

judicially resolved if they can be presented by one having the necessary adverseness.

c. Great Public Importance Test: This test recognizes standing where there exists the need to have issues of great public importance resolved in compliance with the law.

6. As set forward below and in the attached Exhibits, Petitioner is a proper party because: (1) Petitioner's legal rights or interests are substantially affected by July 23 Order, (2) the interests of justice would be served and agency interests would not be impaired by allowing party status and intervention; (3) the interests of justice would be served and agency interests would not be impaired by the orderly and prompt commencement of an adjudicative proceeding; and, (4) under governing case law, Petitioner has standing to request commencement of and participate as a full party in an adjudicative proceeding.

7. The legal rights and interests of Petitioner are substantially and adversely affected by the July 23 Order and the 1) failure of the DRC to properly notice and provide for public comment and a hearing after imposing the Order; 2) failure to comply with the requirements of 10 C.F.R. Part 40, Appendix A, Criterion 6A; failure to require the continued monitoring of the radon emissions from Cell 2 through out the closure period and during at the very time when the radon emissions are increasing due to the dewatering of Cell 2; and failure to specifically require corrective actions to reduce Cell 2 radon emissions during the closure period (prior to the placement of the final radon barrier). The result will be the unmonitored and unmitigated release of radon and radon progeny (cancer causing, radioactive hazardous air pollutants) from Cell 2 of the White Mesa Mill. The unmonitored and unmitigated radioactive releases from tailings Cell 2 substantially and adversely affect Petitioner.

8. Petitioner is a not-for-profit 501(c)(3), non-governmental organization under the fiscal umbrella of Living Rivers. Petitioner has a primary staff member that has been active in issues related to uranium mining and milling in Southeastern Utah for over ten years. Petitioner has actively participated in public hearings, public meetings, public comment opportunities, adjudicatory proceedings, research, and public education associated with the White Mesa Mill.

9. Petitioner's staff, volunteers, and members reside in San Juan and Grand Counties. Petitioner's staff, volunteers, and members hunt, recreate, camp, travel, visit, and conduct other activities in areas impacted the operation of the White Mesa Mill. Petitioner and its members' recreational, environmental, health, and safety interests in the area are affected by the release of radon and radon progeny from the White Mesa Mill. The unmonitored and unmitigated radon emissions from Cell 2 of the White Mesa Mill over the next decade will substantially and adversely affect the interests of Petitioner's staff, volunteers, and members.

10. The DRC's agency action involves health risks to Petitioner and its members that travel, recreate, hunt, and conduct activities in the vicinity of the Mill.

11. Petitioner is currently the primary citizen organization in San Juan and Grand Counties that advocates for the protection of public health and environment from the adverse effects of uranium mining and uranium recovery facilities.² Petitioner can adequately represent its members and raise issues of public interest in the requested adjudication. No prejudice to any party will result from granting Petitioner's Request for

² Example: Uranium Watch submitted 33 pages of comments on the White Mesa Mill License Renewal in December 2011.

Agency Action, because this action is provided for by the administrative procedures that can be found in the Utah Code and Utah Administrative Code. Petitioner is not currently interfering with the orderly and prompt imposition of the July 23 Order, because Petitioner is not seeking a stay of the Order under Utah Code Ann. § 19-1-301.5(15) or Utah Admin. Code R-305-7-217.

12. Petitioner is a proper party based on the interests of the organization and of its members as demonstrated by these statements of facts and by the affidavit of Mr. Love. *See* Exhibit B.

13. Petitioner meets the “public issues” test and appropriately requests review of the July 23, 2014, Permit Order, based on its active participation in advocating the environmental and public health issues associated with uranium milling.

14. Petitioner meets the “public interest” test for standing and is an appropriate and well-suited party based on its active participation in bringing forth the environmental and public health issues associated with the White Mesa Mill.

15. As shown above, Petitioner’s legal interests may be substantially affected by the permit review adjudicative proceeding. Petitioner has also shown that the interests of justice and the orderly and prompt conduct of the permit review adjudicative proceeding will not be materially impaired by allowing the intervention.

16. Utah Admin. Code R305-7-202(1) stipulates that: “As provided in 19-1-301.5(4), if a public comment period is provided during the permit application process, a person who challenges a Permit Order, including the permit applicant, may only raise an issue or argument during the permit review adjudicative proceeding that: (a) the person raised during the public comment period; and” In this instance there was

no permit application submitted to the DRC. The July 23 Order was, in part, responsive to a May 30, 2014, EFRI submittal to the Utah Division of Air Quality.³ *See* Exhibit C. The DRC did not provide public notice and an opportunity for public comment or a hearing on the July 23 Permit Order. Petitioner had no expectation or knowledge of the issuance of the Order until after the Order was issued. Therefore, R305-7-202 does not apply to this Request for Agency Action and Petition to Intervene.

IV. STATEMENT OF FACTS

17. The radon emissions from the White Mesa Uranium Mill are subject to the Environmental Protection Agency (EPA) National Standards for Radon Emissions From Operating Mill Tailings (40 C.F.R. Part 61, Subpart W). *See* Exhibit D. The White Mesa Mill Cell 2 has been subject to the emission standard for “existing” uranium mill impoundments⁴ since the current Subpart W emission standard became effective December 15, 1989.⁵ Cell 2 was constructed prior to 1989 and was licensed to accept additional tailings, therefore, it was subject to the Subpart W radon flux standard at 40 C.F.R. § 61.252(a).

18. Since 1989 the White Mesa Mill licensee has been required to demonstrate that Cell 2 radon emissions are in compliance with the emission standard for “existing”

³ Letter to Bryce Bird, Director, Utah Division of Air Quality, from Jaime Massey, Regulatory Compliance Specialist, Energy Fuels Resources (USA) Inc., regarding White Mesa Uranium Mill, National Emissions Standards for Radon Emission from Operating Mill Tailings Transmittal of April 2014 Monthly Radon Flux Monitoring Report for Cell 2 and Request to Cease Monthly Sampling, May 30, 2014.

⁴ “*Existing impoundment* means any uranium mill tailings impoundment which is licensed to accept additional tailings and is in existence as of December 15, 1989.” 40 C.F.R. § 61.251(d).

⁵ 54 Fed. Reg. 51654-51712, National Emission Standards for Hazardous Air Pollutants; Radionuclides, Final Rule, Environmental Protection Agency, December 15, 1989.

impoundments: 20 pico Curies per-meter per-second (20 pCi/m²-sec (1.9 pCi/(ft²-sec)) of radon-222. 40 C.F.R. § 61.252(a). The Licensee demonstrated compliance through the use of 40 C.F.R. 61, Appendix B, Method 115, "Monitoring for Radon-222 Emissions" and submittal of annual Subpart W compliance reports with the results to the EPA and/or the Utah Division of Air Quality (DAQ). The State of Utah assumed authority for the administration and enforcement of Subpart W and other Part 61 radionuclide National Emission Standards for Hazardous Pollutants (NESHAPS) in 1995. Since 1995 the DAQ has administered and enforced Subpart W and other radionuclide NESHAPS in Utah. The EPA continues to have oversight over Subpart W compliance.

19. If an "existing" tailings impoundment exceeds the 20 pCi/m²-sec standard, the facility must commence monthly radon flux monitoring and reporting to the DAQ, pursuant to 40 C.F.R. § 61.254(b). The licensee must also take actions to bring the impoundment back into compliance. The 2012 Annual Compliance Report for the White Mesa Mill⁶ revealed that the Cell 2 had exceeded the radon flux standard. *See Exhibit E.* Therefore, monthly monitoring of the Cell 2 radon emissions commenced in April 2013, with the first monthly monitoring report submitted in May 2013.

20. The White Mesa Mill Licensee continued to monitor the mill on a monthly basis. Additionally, the Licensee investigated the cause of the increase in the radon flux and took actions to bring Cell 2 back into compliance with the radon flux standard.

⁶ Jo Ann Tischler, Manager, Compliance and Licensing, Energy Fuels Resources (USA) Inc.; letter to Bryce Bird, Director, Utah Division of Air Quality, re: White Mesa Mill, National Emission Standards for Radon Emissions from Operating Mill Tailings, Transmittal of 2012 Annual Radon Flux Monitoring Reports, w/Attachment, March 29, 2013.

21. EFRI determined that the increase in the radon emissions was caused by an accelerated dewatering program and tailings that had blown onto Cell 2 from Cell 3. The water in the tailings impoundment attenuates the emission of radon gas. The tailings were being dewatered to reduce the potential for leakage into the groundwater and to prepare the impoundment for placement of the final radon barrier. After determining the cause of the increase in radon emissions, the windblown tailings were cleaned up, a barrier was placed between the Cells to prevent further deposition of windblown tailings, and additional fill was placed on the interim cover on top of Cell 2. Information regarding the causes of the radon flux increase and actions taken is described in the April 2014 Monthly Subpart W Compliance Report submitted on May 30, 2014, to the DAQ (Exhibit C) and the 2013 Annual Compliance Report for Cell 2.⁷ See Exhibit F.

22. In the monthly monitoring report for April 2014, EFRI requested DAQ approval to cease monthly sampling and return to the sampling frequency contemplated by 40 C.F.R. § 61.253. The Director of the DRC was copied on that request. EFRI did not request approval from the DRC for the cessation of monthly radon monitoring, because the DRC does not have regulatory authority for the enforcement of 40 C.F.R. Part 61, Subpart W.

23. On July 23, 2014, the DRC issued an Order, responsive to the May 30, 2014, EFRI letter and April monthly monitoring report. In the July 23 Order the DRC stated,

⁷ Jamie Massey, Regulatory Compliance Specialist, Energy Fuels Resources (USA) Inc.; letter to Bryce Bird, Director, Utah Division of Air Quality, re: White Mesa Mill, National Emission Standards for Radon Emissions from Operating Mill Tailings, Transmittal of 2013 Annual Radon Flux Monitoring Report for Tailings Impoundment 2, w/Attachment, March 28, 2014.

“In agreement with the Division of Air Quality, the Division of Radiation Control (DRC) has determined that the licensee can cease monthly monitoring of tailings cell 2.”

24. The Order clarified the regulatory status of Cell 2 and stated that “tailings Cell 2 is not in operation and is in closure.” The DRC also stated, “Because Tailings Cell 2 is no longer in operation (receiving tailings), the Division of Air Quality and the Division of Radiation Control agree that Subpart W NESHAPs requirements (40 CFR Part 61) no longer apply.”

25. The DRC Order stipulated that no additional radioactive materials or other waste be added to Cell 2. By such an Order, the DRC, in fact, amended the White Mesa Mill License⁸ to remove any authorization for the disposal of additional tailings or waste in Cell 2. *See* Exhibit G. As a result of the Order, Cell 2 no longer meets the 40 C.F.R. § 61.251(d) definition of an “existing impoundment.” Further, the DRC stated that Cell 2 has entered the closure period, and, therefore, Cell 2 does not meet the definition of a tailings impoundment that is in “operation.”⁹ The result of this DRC Order is to take Cell 2 out from under the regulatory authority of Subpart W. This means that EFRI will not be required to monitor Cell 2 radon emissions and submit annual Subpart W compliance reports to the DAQ, pursuant to 40 C.F.R. Part 61, Subpart W.

26. In place of DAQ and EPA authority over the radon emissions from Cell 2, the DRC imposed certain requirements for the continuation of radon monitoring on a semi-

⁸ Utah Radioactive Material License (RML) UT 1900479, License Amendment 7, July 10, 2014.

⁹ (e) *Operation* means that an impoundment is being used for the continued placement of new tailings or is in standby status for such placement. An impoundment is in operation from the day that tailings are first placed in the impoundment until the day that final closure begins. 40 C.F.R. § 61.251(e).

annual basis, using the same EPA radon monitoring Method 115. The DRC will require compliance with the 20 pCi/m²-sec standard “until a new MILDOS-Area Model to analyze a higher radon flux is completed and demonstrates compliance with dose limits based on the releases from the Mill.” This means for an unknown period of time—since the DRC has not set a date certain to complete a new MILDOS-Area Model to analyze a higher radon flux and demonstrate compliance—Cell 2 must comply with the 20 pCi/m²-sec standard. After that, ENRI will not be required to monitor the radon flux from Cell 2 or limit the Cell 2 radon emissions.

27. The MILDOS-Area Model is a model that is supposed to take into consideration all radioactive emissions from the Mill as a whole and limit the dose to the nearest offsite receptor (that is, resident) to 100 millirems per year (mrem/yr). Utah Admin. Code R313-15-301(1)(a). The dose is not measured, but is calculated using various inputs and models. According to the DRC, the new modeling results must include estimates of a higher radon flux from Cell 2. However, the DRC does not state exactly what higher radon flux value will be used in the model. Nor does the DRC state how ENRI will demonstrate compliance with the Model and the 100 mrem/yr offsite dose limit.

28. The DRC stipulated that the radon monitoring results will be included in the White Mesa Mill Semi-Annual Effluent Monitoring Reports submitted to the DRC, that the first semi-annual measurement will take place during the 2nd half of calendar year 2014, and the results will be included in the Semi-Annual Effluent Report for July through December 2014.

29. The DRC also Ordered that the radon flux monitoring be included in the revised Environmental Monitoring Plan as per license condition 11.9 of the radioactive material license, and that the radon flux results will be shared with the DAQ.

30. Additionally, the July 23 Order stated that Cell 2 “is currently undergoing dewatering in accordance with the approved reclamation plan, known as version 3.2b.”

31. The Order also states, “At this phase of cell 2 closure activities, the requirements of 10 CFR Part 40, Appendix A, Criterion 6 do apply.”

V. STATEMENT OF REASONS AND CONTENTIONS

32. The July 23 Permit Order was a significant amendment or modification to the White Mesa Mill License. However, the DRC did not treat the Order as a normal amendment to the Mill’s License. There was no indication of a License amendment number or statement of the changes that would appear in the License. For example, the DRC Order stipulated that that no additional radioactive materials of any sort or other waste can be disposed of in Cell 2. The current License allows for such disposal. Petitioner fully understands that sometimes it is necessary for the DRC to impose conditions on a license or licensee in order to protect the public health and safety in a timely manner. However, the July 23 Order goes beyond the immediate need to require semi-annual radon monitoring and compliance with a radon emission limit. Therefore, the DRC should have provided a draft License with the changes imposed by the Permit Order for public notice and comment after the issuance of the Order.

33. The DRC should have assessed the environmental and health and safety impacts that will result from the Permit Order. The DRC should have produced an environmental analysis, pursuant to Utah Admin. Code R313-24-3. R313-24-3 requires

that each major amendment of the license contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. More specifically, the DRC should have assessed the radiological impacts to the public health associated with the conditions imposed by the Order and considered alternatives, pursuant to R313-24-3(1)(a) and (c). An alternative that the DRC should have considered was the continued monitoring of radon and compliance with the 20 pCi/m²-sec limit throughout the closure period.

34. The DRC failed to make an environmental analysis of the amendments to the license that were imposed by the Order available for public notice and comment pursuant to Utah Admin. Code R313-17-2, as required by R313-24-33.

35. The DRC failed to give the public notice of and provide an opportunity to comment on the stipulations imposed by the July 23 Order, pursuant to Utah Admin. Code R313-17-2. Specifically, R313-17-2(1)(a)(F), (G), and (I) require public notice of licensing actions that include 1) a change in engineering design, construction, or process controls that will more than likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment; 2) a decrease in environmental monitoring or sampling frequency; and 3) pending approval of corrective actions to control or remediate existing radioactive material contamination, not already authorized by a license.

36. The DRC did not provide an opportunity for public notice and a hearing with an opportunity for cross examination and a transcript after the environmental analysis of the licensing action has been made available, as required by the Atomic Energy Act of 1954 (AEA) for Nuclear Regulatory Commission (NRC) Agreement States at 42 U.S.C.

§ 2021(o)(3)(A) and (C). The Radiation Control Board recently approved a Rulemaking that would bring the DRC's regulations into compliance with the AEA with respect hearings and an opportunity for cross examination.¹⁰

37. The DRC did not have the authority to make a determination that "the licensee can cease monthly monitoring of tailings cell 2." The Utah DAQ or EPA has the authority to made that determination, not the DRC.

38. The DRC should have specifically required corrective actions be taken in a timely manner if the radon flux for Cell 2 exceeds 20 pCi/m²-sec. To that end, the DRC should have required that EFRI submit the results of the semi-annual radon flux measurements within 30 days of receiving the results and commence corrective actions within 30 days of becoming aware of an exceedance. The DRC should make clear that the results of the semi-annual radon flux monitoring will not be "averaged," as allowed by Method 115 for an annual radon flux determination.

39. The July 23 Permit Order states:

Since the MILDOS-Area Models that have been run to show compliance with dose limits for releases from the Mill were based on a limit of 20 picocuries per square meter second (pCi m²*sec), in order to ensure compliance with previously analyzed conditions, theDRC will require the licensee to continue to measure the radon flux in accordance with 40 CFR 61, Appendix B, Method 115, "Monitoring for Radon-222 Emissions" (2013). The measured radon flux for Cell 2 shall not exceed a value of 20 (pCi/m²*sec) until a new MILDOS-Area Model to analyze a higher radon flux is completed and demonstrates compliance with dose limits based on the releases from the Mill.

This means that, once EFRI analyzes a higher radon flux using the MILDOS-Area Model and demonstrates compliance with dose limits, EFRI will no longer be required to

¹⁰ <http://www.deq.utah.gov/boards/radiationcontrol/docs/08Aug/August2014BoardPacket.pdf>

monitor the radon emissions from Cell 2. And that means that EFRI, the DRC, and the public will have no way of knowing if the radon flux from Cell 2 is again increasing as the water within the pile decreases due to natural evaporation and active dewatering. Active dewatering has already caused an unanticipated increase in the radon emissions and necessitated the placement of additional fill to augment the existing interim cover. If radon monitoring ceases, there is no way of determining if additional fill would be required prior to the placement of the final radon barrier on the impoundment. The DRC should have, but did not, require radon flux measurements and compliance with the standard throughout the dewatering process.

40. The DRC should have, but did not, explain what dose standard must be met using the a new MILDOS-Area Model, what “higher radon flux” level from Cell 2 will be used in the new analysis, and how compliance with that dose standard will be demonstrated.

41. Utah Admin. Code R313-15-101(2) requires that: “The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).” By authorizing the cessation of radon flux monitoring, eliminating the requirement to comply with the 20 pCi/m²-sec emission limit, and eliminating any possibility of corrective actions to reduce the radon emissions if the radon emission limit is exceeded, the DRC has failed in its responsibility to require procedures and engineering controls to achieve doses to members of the public that are as low as reasonably achievable. The DRC has failed to ensure the maximum protection of the public health and safety to all persons at, or in the

vicinity of, the White Mesa Mill.

42. The Permit Order states with respect Cell 2: “The cell is currently undergoing dewatering in accordance with the approved reclamation plan, known as version 3.2b.” According to the DRC staff, Reclamation Plan version 3.2b is the version submitted under cover of a letter from EFRI, dated January 28, 2011.¹¹ Revision 3.2 states: “Revision 3.2 Final constitutes an Addendum to Approved Revision 3.0 and 3.1 of the White Mesa Mill Reclamation Plan.” Rev. 3.2 completely replaces Rev. 3.1 and replaces and revises Rev. 3.0. According to DRC staff, Rev. 3.2 was approved in letter dated January 26, 2011. According to the current White Mesa Mill License at License Condition 9.11: “The updated reclamation plan shall revise the information contained in the Reclamation Plan Revision 3.0 submitted to the NRC on July 17, 2000, and an update to Rev 3.0 of the Reclamation Plan that was prepared by the Licensee July 25, 2008, and approved on August 4, 2008 (now referred to as Rev. 3.1).” License Condition 9.11 also states: After revision of Rev. 3.1, the updated Reclamation Plan shall be referred to as Rev. 3.2, and shall contain the following information. . . .” Although the DRC staff states that Rev. 3.2 was approved by the DRC, neither that version or the previous Revisions 3.0 and 3.1 are incorporated into the White Mesa License as amendments to the License. There is no indication of an opportunity for public comment on the various revisions to the Reclamation Plan. In fact, since January 2011, EFRI has submitted Revision 5 to the Reclamation Plan. The DRC is in the process of reviewing Rev. 5. As far as Petitioner

¹¹ White Mesa Mill Reclamation Plan Revision 3.2, Final Addendum/Changed Pages for the White Mesa Mill and Tailings Management System, January 2011, State of Utah 11e.(2) Byproduct Material License # UT1900479. http://www.deq.utah.gov/businesses/E/energyfuels/docs/2009/07Jul/REC_PLAN_REVISION_3.2_FINALreduced.pdf

can determine, Reclamation Plan Revisions 3.0, 3.1, and 3.2 were not incorporated into the License, nor were they subject to an environmental analysis. Utah Admin Code. R313-24-3(d) requires an environmental analysis for “Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment” and public notice and comment. Therefore, it cannot be said that Reclamation Plan Revision 3.2 is an approved Reclamation Plan. Further, Rev. 3.2 does not include any discussion of the placement and maintenance of the interim cover or the dewatering of Cell 2.

43. The July 23 Permit Order states: “At this phase of cell 2 closure activities, the requirements of 10 CFR Part 40, Appendix A, Criterion 6 do apply.” These NRC regulations have been incorporated into DRC regulations by reference. Criterion 6A(1) states:

(1) For impoundments containing uranium byproduct materials, the final radon barrier must be completed *as expeditiously as practicable considering technological feasibility* after the pile or impoundment ceases operation in accordance with a written, Commission-approved reclamation plan. (The term *as expeditiously as practicable considering technological feasibility* as specifically defined in the Introduction of this appendix includes factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: windblown tailings retrieval and placement on the pile and interim stabilization (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the tailings must also be completed in a timely manner in accordance with a written, Commission-approved reclamation plan.

However, EFRI has not complied with Criterion 6A(1) requirement for Cell 2, in that: 1) there is no written reclamation that has been approved in accordance with the requirements of Utah Admin. Code R313-17-2 and R313-24-3 and incorporated into the

White Mesa Mill License and 2) EFRI has not applied for and received approval of reclamation milestones for the completion of the final radon barrier, interim stabilization, dewatering, or cleanup of windblown tailings. The incorporation of the reclamation milestones into the White Mesa Mill License requires public notice and comment on a proposed license amendment. Therefore, Cell 2, which the DRC has determined is now officially in the closure period, lacks the required elements for regulation of the closure period: An approved “closure” plan (Reclamation Plan) that has been incorporated into the License and approved enforceable reclamation milestones that have been incorporated into the License. If Cell 2 is, in fact, in the closure period and is not longer subject to 40 C.F.R. Part 61 Subpart W, Cell 2 must also have an approved closure plan and approved reclamation milestones incorporated into the License as license amendments.

VI. REQUEST FOR RELIEF

44. The DRC must follow the statutory and regulatory procedures for the issuance of a Permit Order that is a significant amendment to an 11e.(2) byproduct material license. This includes an environmental analysis, notice and comment, and an opportunity for a hearing with cross examination and a transcript after the issuance of the environmental analysis.

45. The DRC must acknowledge that they do not have the authority to make a determination that EFRI “can cease monthly [radon] monitoring of tailings cell 2.” Only the Utah DAQ or the EPA have the authority to make a determination with respect the implementation and enforcement of 40 C.F.R. Part 61 Subpart W.

46. The DRC must require EFRI to use procedures and engineering controls to achieve doses to members of the public that are as low as is reasonably achievable

(ALARA), pursuant to R 313-15-101(2). In order to assure that the doses to the public are as low as is reasonably achievable, the DRC must require the continued monitoring of the radon from Cell 2 during the period the tailings impoundment is drying out and prior to the placement of the final radon barrier. The DRC must require the reporting of the radon emissions on a semi-annual basis (without averaging the results), reporting within 30 days of receiving the results, and timely actions to reduce the radon emissions if they exceed 20 pCi/m²-sec.

47. The DRC should explain what dose standard must be met using the a new MILDOS-Area Model, what “higher radon flux” level from Cell 2 will be used in the new analysis, and how compliance with that dose standard must be demonstrated.

48. The DRC must implement and enforce the provisions in 10 C.F.R. Part 40, Appendix A, Criterion 6A(1), with respect the requirement for enforceable reclamation milestones. The DRC must Order EFRI to submit Cell 2 reclamation milestones for placement of the final radon barrier, dewatering, completion of an interim cover that will be sufficient to attenuate radon emissions during the closure period so that they are below 20 pCi/m²-sec, and cleanup of any windblown tailings that have accrued on and offsite. The DRC must provide a date certain for the submittal of the proposed milestones of not less than 30 days from the issuance of that Order.

49. The DRC must implement and enforce the provisions in 10 C.F.R. Part 40, Appendix A, Criterion 6A, with respect the requirement for an approved closure plan. That closure plan (Reclamation Plan) must detail the steps to be taken to achieve final closure, including the dewatering, maintenance of the interim cover, and steps to be taken to assure that the radon emissions from the impoundment are as low as reasonably

achievable throughout the closure period. The DRC must develop an environmental analysis, provide the public with an opportunity for comment and a hearing with an opportunity for cross examination and a transcript for the approval of the Reclamation Plan.

Respectfully submitted,

/s/ Sarah Fields

Dated August 22, 2014

REQUEST FOR AGENCY ACTION AND PETITION TO INTERVENE

EXHIBITS

- A. Letter from Rusty Lundberg, Director, Utah Division of Radiation Control, to David Frydenlund, Senior Vice President General Counsel and Corporate Secretary, Energy Fuels Resources (USA) Inc. Request to Cease Monthly Radon Flux Sampling Tailings Cell 2: Radioactive Material License Number UT 1900479, July 23, 2014; URC-2014-004489.
- B. Affidavit of Bill Love, Moab, Utah.
- C. Letter to Bryce Bird, Director, Utah Division of Air Quality, from Jaime Massey, Regulatory Compliance Specialist, Energy Fuels Resources (USA) Inc., regarding White Mesa Uranium Mill, National Emissions Standards for Radon Emission from Operating Mill Tailings Transmittal of April 2014 Monthly Radon Flux Monitoring Report for Cell 2 and Request to Cease Monthly Sampling, May 30, 2014.
- D. 40 C.F.R. Part 61, Subpart W.
- E. Jo Ann Tischler, Manager, Compliance and Licensing, Energy Fuels Resources (USA) Inc.; letter to Bryce Bird, Director, Utah Division of Air Quality, re: White Mesa Mill, National Emission Standards for Radon Emissions from Operating Mill Tailings, Transmittal of 2012 Annual Radon Flux Monitoring Reports, w/ Attachment, March 29, 2013.
- F. Jamie Massey, Regulatory Compliance Specialist, Energy Fuels Resources (USA) Inc.; letter to Bryce Bird, Director, Utah Division of Air Quality, re: White Mesa Mill, National Emission Standards for Radon Emissions from Operating Mill Tailings, Transmittal of 2013 Annual Radon Flux Monitoring Report for Tailings Impoundment 2, w/Attachment, March 28, 2014.
- G. Utah Radioactive Material License (RML) UT 1900479, License Amendment 7, July 10, 2014. DRC-2014-004261.

CERTIFICATE OF SERVICE

The undersigned caused the foregoing Petition to Intervene to be emailed today to:

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Dated this 22nd day of August 2014

/s/ Sarah Fields