

U.S. Environmental Protection Agency  
Attention Docket ID No. EPA-HQ-OAR-2008-0218  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

## **Comments on Proposed Rule to National Emission Standards for Radon Emissions from Operating Mill Tailings**

Thank you for the opportunity to provide public comment on the Environmental Protection Agency's (EPA) Revisions to National Emission Standards for Radon Emissions from Operating Mill Tailings, 40 CFR Part 61, Subpart W ("Proposed Rule").

Please accept these comments on behalf of Earthworks, a national nonprofit organization dedicated to protecting communities and the environment from the impacts of mineral development while seeking sustainable solutions. And on behalf of the Bluewater Valley Downstream Alliance, a group of citizens from neighboring communities near Grants and north of Milan, New Mexico, whose underground water resources have been contaminated by uranium mining and milling activities that began in the 1950s.

### **I. EPA should not remove the 40-acre limit for unconventional impoundments**

The Proposed Rule states that EPA expects between 20-30 new in situ leach (ISL) facilities over the next decade<sup>1</sup>. Currently, ISL mines account for about 80% of domestic uranium production. The growth in this form of mining and the related increase in number of unconventional impoundments call for greater precaution from EPA. Instead, EPA proposes to remove the 40-acre limit for the impoundments from these facilities. Removing this limit would, in theory, allow ISL evaporation ponds filled with radioactive uranium byproducts of unlimited size.

Allowing ponds of unlimited size works at cross purposes with the 40 CFR part 192 regulations designed to prevent ground and surface water pollution from these facilities. The bigger the ponds, the more danger created in the event of a structural failure. This risk of contamination increases when, as EPA suggests, operators use process water to meet the one-meter water cover requirement.<sup>2</sup> The Proposed Rule states:

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<sup>1</sup> 79 Fed. Reg. 25394

<sup>2</sup> 79 Fed. Reg. 25403

*EPA cannot allow a situation where the reduction of radon emissions comes at the expense of increased pollution of the ground or surface water. (italics added)*<sup>3</sup>

Ponds of unlimited size with process water as cover will lead to increased ground and surface water regardless of their effect on radon emissions.

EPA is also well aware of the direct linear relationship between the size of an impoundment and the amount of radon emitted<sup>4</sup>. It is for this reason EPA originally imposed the 40-acre limit for dry impoundments. In the Proposed Rule, however, EPA now maintains that a liquid cover for nonconventional impoundments obviates the need for a size limitation. Yet, EPA simultaneously says that the amount of radon reduced by a water cover does, in fact, vary based on the size of the nonconventional impoundment.<sup>5</sup> It cannot be both.

## **II. EPA should remove neither the radon flux standard nor the monitoring requirements**

The EPA's proposals to both remove the radon flux standard and air monitoring of Subpart W facilities signals a complete abdication of the agency's responsibility to protect public health and the environment. EPA justifies this decision based upon the agency's purported experience that the regulated facilities currently fall in compliance with Subpart W.

This conclusion is in error. In fact, radon emissions from Cell 2 at the White Mesa facility exceeded the existing standard in both 2012 and 2013<sup>6</sup>. These and other related violations currently form the basis for ongoing litigation<sup>7</sup>. EPA's decision therefore to remove the radon flux standard and associated monitoring requirements in the face of documented existing Clean Air Act violations appears especially troubling.

## **III. EPA should exercise its discretion to require maximum achievable control technologies (MACT) rather than generally available control technologies (GACT)**

According to the Proposed Rule, EPA plans to use its discretion under Section 112(d)(5) of the Clean Air Act to require GACT in lieu of MACT. This proposal runs contrary to everything EPA knows about the radioactive legacy left to the Navajo Nation from over sixty years of uranium mining. In light of the tragic legacy from

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<sup>3</sup> 79 Fed. Reg. 25393 reprinted in the Proposed Rule from 54 Fed Reg. 51564, 51680 (December 15, 1989)

<sup>4</sup> 79 Fed. Reg. 25393

<sup>5</sup> 79 Fed. Reg. 25402

<sup>6</sup> Energy Fuels, NESHAP Part 61 Subpart W Annual Report (April 17, 2013)

<sup>7</sup> See [Grand Canyon Trust Notice of Intent to Sue Energy Fuels for Violations of the Clean Air Act at White Mesa Mill](#)

the Church Rock disaster and the Midnite Mine<sup>8</sup>, EPA owes the communities it is obligated to protect that the facilities holding uranium byproduct milling waste are as safe as possible. EPA provides no justification for the use of GACT other than merely asserting the discretion to do so.

#### **IV. Definition of “Operation” pursuant to 40 CFR 61.251**

We appreciate EPA’s decision to clarify the meaning of “operation” for a conventional impoundment. We support the proposed clarification with the additional recommendation that the final sentence read:

An impoundment is in operation from the day that uranium byproduct materials or tailings are first placed in the impoundment until the day that final closure *ends* (emphasis added).

#### **Conclusion**

Thank you for the opportunity to provide comments on the Proposed Rule. Taking all the above considerations in to account, EPA should keep in place the existing rule and begin crafting a new proposal that recognizes the factual assertions in the Grand Canyon Trust litigation. In addition, EPA should include MACT, maintain monitoring requirements, reconsider the radon flux standard, and restore area limitations for unconventional impoundments. Finally, EPA should consider Subpart W revisions in light of any proposed changes to 40 CFR part 192 to ensure consistency.

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<sup>8</sup> See [Nuclear Power’s Other Tragedy](#), Communities Living with Uranium Mining, Earthworks report by Erika Kamptner