



Uranium Recovery Licensing Activities

Larry W. Camper

Director

Division of Waste Management and
Environmental Protection



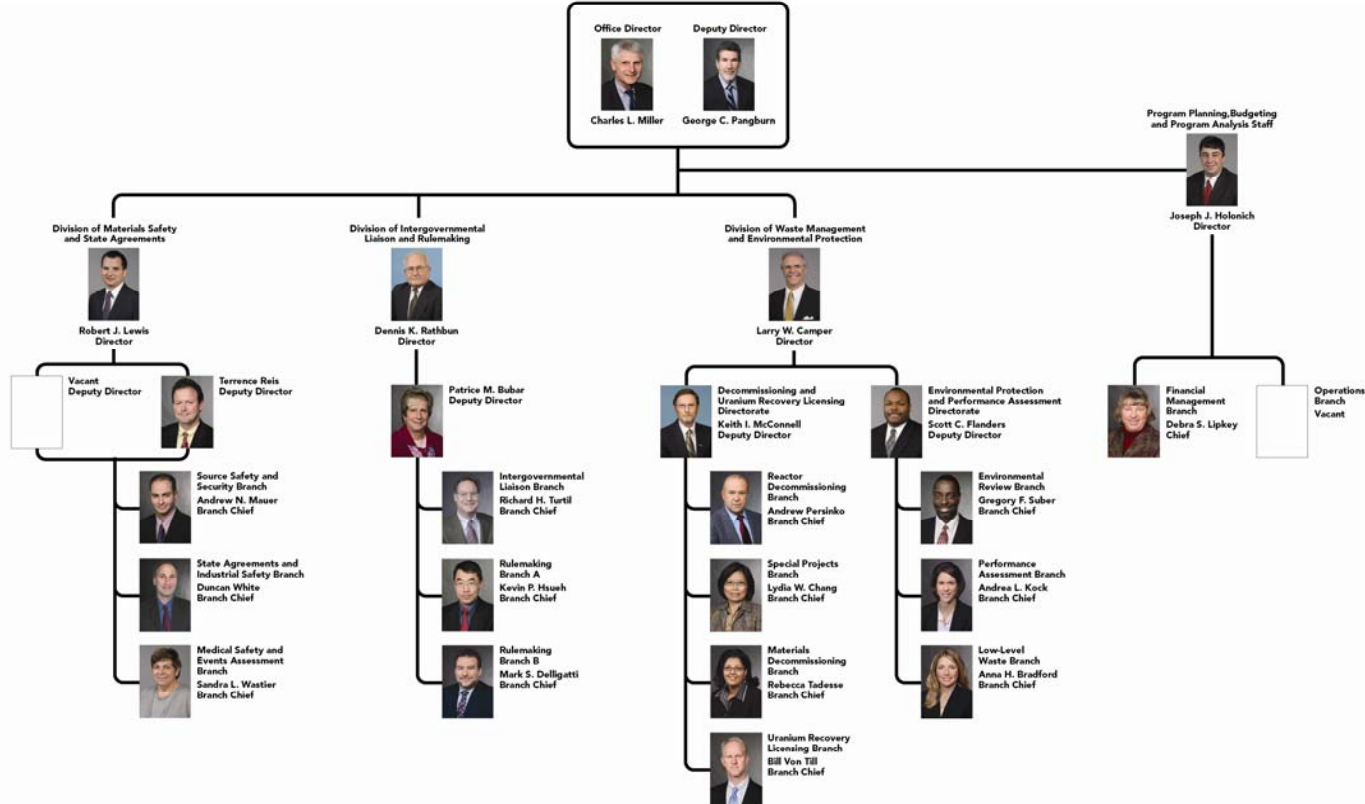
United States Nuclear Regulatory Commission

Protecting People and the Environment

Organization



Office of Federal and State Materials and Environmental Management Programs



As of March 2, 2010

URLB Staff

- Bill von Till, Chief
- Ron Linton, Sr. Hydrogeologist/PM
- Mike Fliegel, Sr. PM
- Stephen J. Cohen, Hydrogeologist/PM
- Elise Striz, Hydrogeologist
- Douglas Mandeville, Geotechnical Engineer
- Betty Garrett, Licensing Assistant
- James Webb, Health Physicist
- Dan Gillen, Consultant
- Rick Weller, Consultant
- Hydrogeologist, TBD
- Hydrogeologist, TBD
- Health Physicist, TBD
- Health Physicist, TBD
- Team Leader, TBD

Environmental Review Branch Staff

- Gregory Suber, Chief
- Jeannette Arce, Geologist
- Alan Bjornsen, PM
- Allen Fetter, PM
- Gloria Colessa, Team Leader
- Kellee Jameson, NSPDP
- Johari Moore, PM
- James Park, PM
- Ernesto Quinones-Padovani, PM
- Christianne Ridge, Sr. PM
- Behram Shroff, PM
- Patricia Swain, PM
- Project Manager, TBD
- Licensing Assistant, TBD

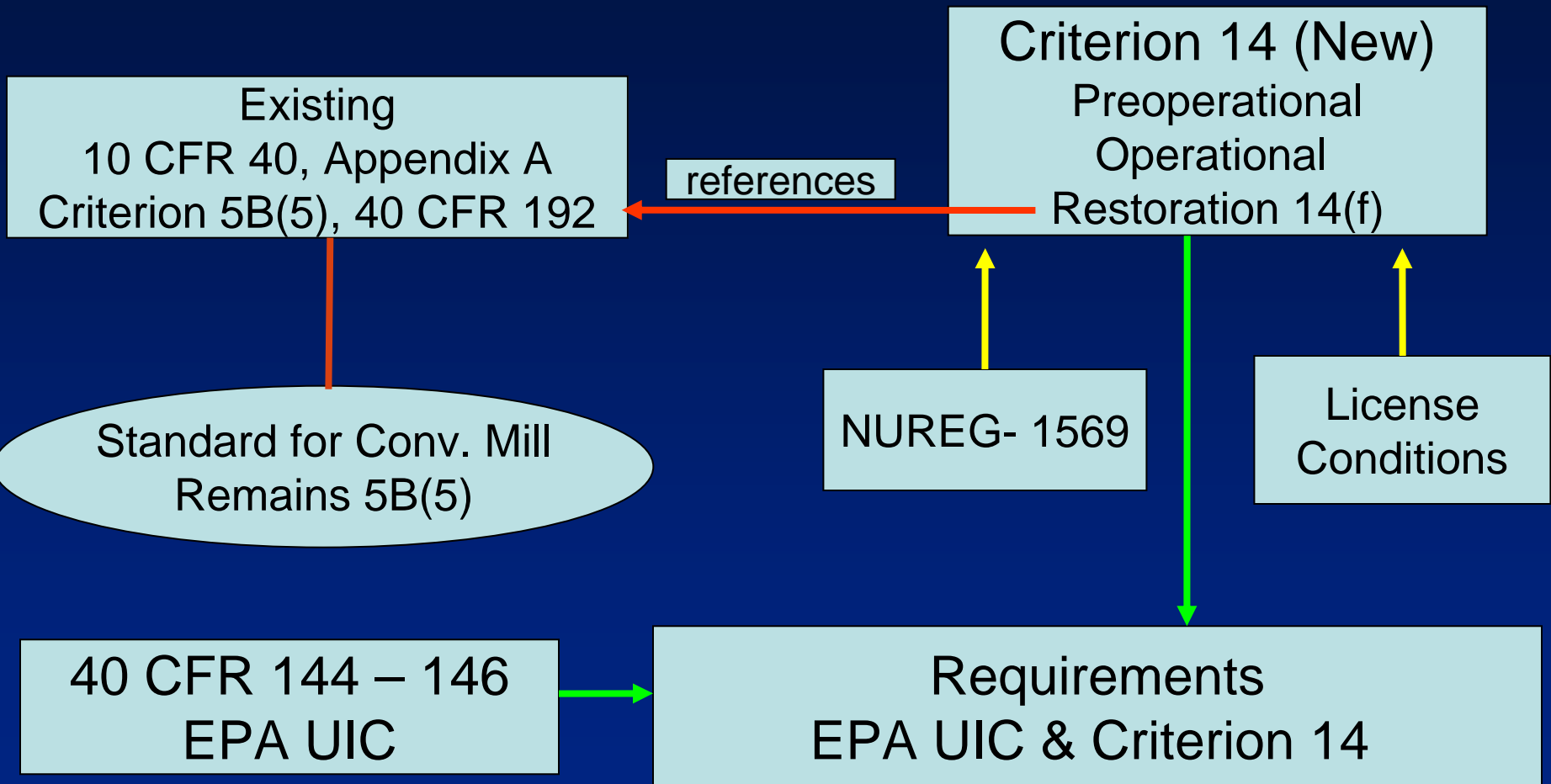
Current Status

- Interest in US Uranium Recovery High
- International Phenomenon
- International Forum on Sustainable Options for Uranium Production (IFSOU)
- Initiation of GEIS

Current Status (cont'd.)

- ISL Rulemaking
- Licensing Hearings
- Applicant Meetings
- Congressional Inquiries
- Update Regulatory Guides

ISL Rulemaking

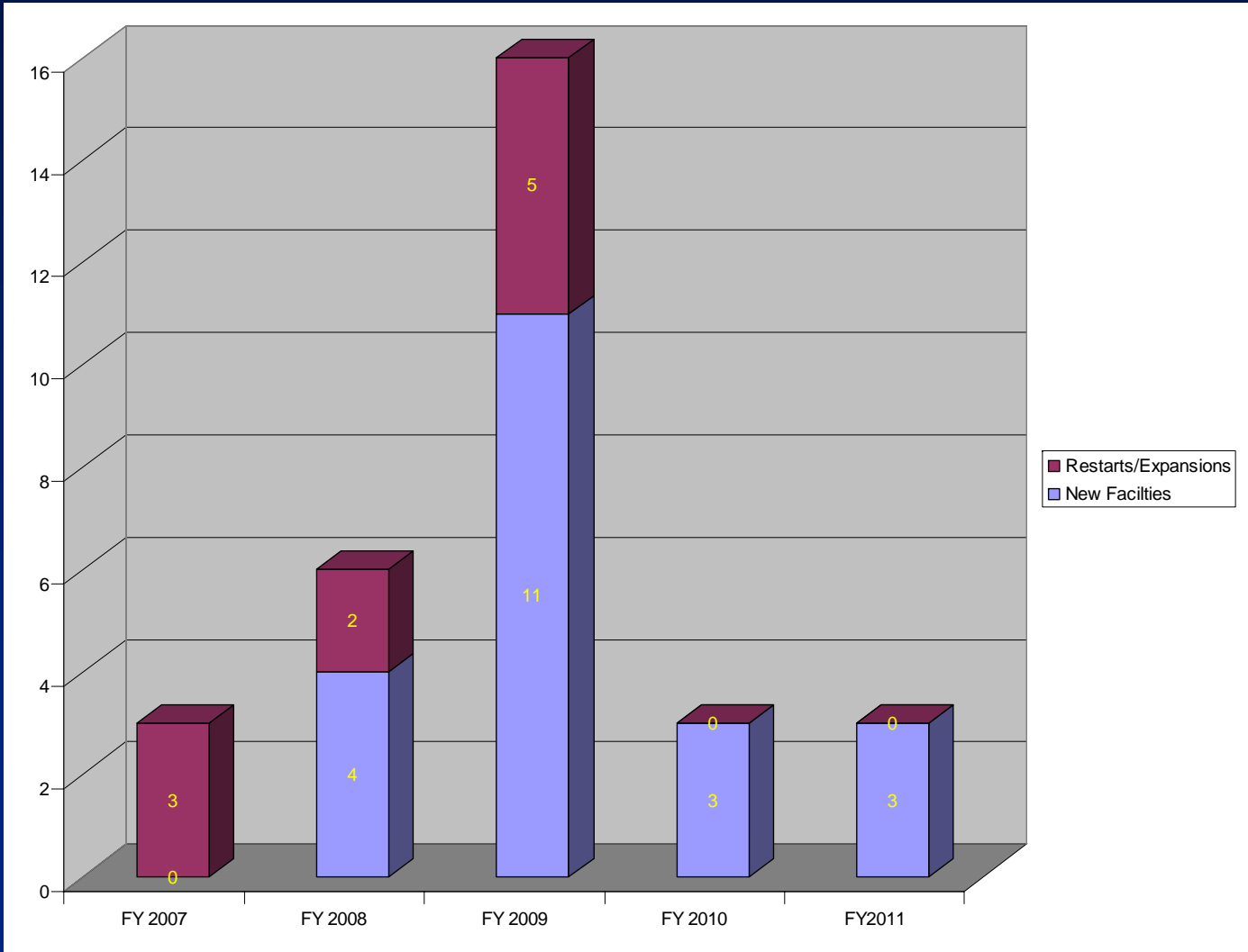


ISL Ground Water Standards

Uranium Project Summary

Facility	Quantity
New ISL Facility	14
New Conventional Mill	7
Combined ISL-Conv.	1
ISL Expansion	7
ISL Restart	1
Conventional Restart	1
TOTAL	31

Uranium Project Summary (cont'd.)



Uranium Project Summary (cont'd.)

Expected Uranium Recovery Facility Applications / Restarts / Expansions					
Company	Site	Design type	Estimated Application Date	State	Letter of Intent
Fiscal 2007 Applications					
Cogema	Christensen Ranch	ISL - Restart	Received April 2007	WY	None
Cameco (Crow Butte Resources, Inc.)	North Trend	ISL - Expansion	Received June 2007	NE	None
Cameco (Crow Butte Resources, Inc.)	Plant Upgrade	ISL - Expansion	Rec. 10/06, Comp. 12/07	NE	None
Fiscal 2008 Applications					
Lost Creek ISR, LLC	Lost Creek	ISL - New	Received October 2007	WY	05/23/07
Urinerz Energy Corp.	Hank and Nichols	ISL - New	Received December 2007	WY	06/27/07
Uranium One (Energy Metals Corporation)	Moore Ranch	ISL - New	Received October 2007	WY	05/31/07
Uranium One (Energy Metals Corporation)	Jab and Antelope	ISL - New	Mid FY 08	WY	05/31/07
Cameco (Power Resources, Inc.)	Gas Hills	ISL - Expansion	Mid FY 08	WY	03/20/08
Kennecott Uranium Co.	Sweetwater	Resin Elution - Expansion	Mid FY 08	WY	03/20/08
Fiscal 2009 Applications					
Cameco (Crow Butte Resources, Inc.)	Three Crow	ISL - Expansion	FY 09	NE	03/20/08
Lost Creek ISR, LLC	Lost Creek	ISL - Expansion	FY09	WY	03/21/08
Powertech Uranium Corporation	Dewey Burdock	ISL - New	FY 09	SD	01/26/07
Cameco (Power Resources, Inc.)	Smith Ranch/Highland CPP	ISL - Expansion	Mid FY 09	WY	03/20/08
Cameco (Power Resources, Inc.)	North Butte	ISL - Expansion	Mid FY 09	WY	03/20/08
Strathmore Minerals Corporation	Roca Honda	Conv. - New	FY 09	NM	04/23/07
Strathmore Minerals Corporation	Sky	ISL - New	FY 09	WY	05/11/07
UR-Energy Corp.	Lost Soldier	ISL - New	Mid FY 09	WY	03/20/08
Uranium Resources, Inc.	Ambrosia Lake	Conv. - Restart	Mid FY 09	NM	03/21/08
Uranium Energy Corporation	Grants Ridge	Heap Leach - New	FY 09	NM	02/22/08
Urinerz Energy Corporation	Collins Draw	ISL - New	FY 09	WY	03/20/08
Rio Grande Resources	Mt. Taylor	Conv. - New	FY 09	NM	03/21/08
Uranium One (Energy Metals Corporation)	Ludeman	ISL - New	FY 09	WY	03/20/08
Uranium One (Energy Metals Corporation)	Allemand-Ross	ISL - New	FY 09	WY	03/20/08
Wildhorse Energy	West Alkali Creek	ISL - New	FY 09	WY	03/20/08
Concentric	Yavapai County	Conv. - New	FY 09	AZ	03/20/08
Fiscal 2010 Applications					
Cameco (Power Resources, Inc.)	Ruby Ranch	ISL - New	FY 10	WY	03/20/08
Neutron Energy	Marquez	Conv. - New	FY 10	NM	03/25/08
Strathmore Minerals Corporation	Reno Creek	ISL - New	FY 10	WY	03/21/08
Fiscal 2011 Applications					
Strathmore Minerals Corporation	Gas Hills	Conv. - New	FY 11	WY	03/21/2008
Bayswater Uranium Corporation	Alzada	ISL - New	FY11	MT	03/27/2008
Wildhorse Energy	Sweetwater	ISL and Conv. - New	FY 11	WY	-
4 year projected total reviews = 31					
Total New Uranium Recovery Applications = 21					
Total Restart/Expansion Uranium Recovery Applications = 10					

Credible Letters of Intent

- Signed by a Corporate Officer
- Include a Specific Submission Date and Location
- Preliminary Work Completed To Date:
 - Exploration
 - Site Characterization
 - Other Steps to Assure Submission Date is Met

Industry Actions

- NMA Environmental Report for GEIS
- 3 Applications for New Facilities Received
- 3 Applications for Expansions or Restarts Received
- 27 Letters of Intent/27 Projects

Status of Applications

- New Facility Applications
 - 2 Acceptance Reviews Complete
 - 1 Acceptance Review in Progress
 - 2 Technical Reviews in Progress
- Expansions/Restarts
 - 1 Amendment Issued
 - 2 Technical Reviews in Progress

Lessons Learned

- Radiation Protection Must be Properly Addressed
- Hydrogeology
- NRC Budget Cycle
- Peak Licensing Activity in 2009-2010

The Future

- Stakeholder Outreach
- Beyond FY2011
- Future Congressional interaction
- Hearings

Challenges

- New License Applications
- Attrition & Recruitment
- Consistency with Staff Contacts
- ISL Rulemaking
- Potential Re-starts and Upgrades
- Fully Address Stakeholder Concerns
- Potential for Hearings

Conclusions

- Reviewing Applications and Processing SERs
- Addressing Resource Shortfalls
- Licensing Casework Has Grown
- GEIS Has Drawn Mixed Reviews

Conclusions

- We Are Prepared
- We Utilize an Open Process
- Stakeholder Concerns are Addressed
- Regulatory Actions will Result in Safe Activities



NRC's Uranium Recovery Inspection Program

2008 NMA/NRC Uranium Recovery Workshop
April 30, 2008

Linda M. Gersey, Health Physicist
NRC RIV

Discussion Topics

- Inspection Frequency
- Summary of 2007 Inspection Findings
- Inspection Fees and Billing Policy
- Administrative Changes to Licenses
- Regional Management Changes

Inspection Frequencies

- 2 Manual Chapters govern the UR inspection program
 - MC 2641: In-Situ Leach Uranium Recovery
 - MC 2801: Uranium Mill Sites

Inspection Frequencies, cont.

MC 2641 (ISLs only)

- Producing ISLs (2 facilities)
 - Normal: 6 months
 - Extended: 12 months
- Standby or Inactive ISLs (1 facility)
 - Normal: 1 year
 - Extended: 3 years
- ISLs in Restoration (none)
 - Normal: 1 year
 - Extended: 3 years

Inspection Frequencies, cont.

MC 2801 (conventional mills)

- Through 2006, Region IV conducted UR inspections with the following frequencies:
 - once per year at selected facilities
 - every 2 years at facilities in reclamation and standby
 - every 3 years at inactive sites
- Beginning in 2007, Region IV began conducting UR inspections in accordance with the specified frequency in MC 2801 or 2641
 - For example, RIV plans to reduce the 3 year interval to 2 years to agree with MC 2801 and MC 2800 (materials) guidance

Inspection Frequencies, cont.

- Number of UR Inspections Performed by Region IV
 - 2006: 7
 - 2007: 11 (plus 2 site visits)
 - 2008: 9 planned (plus 2-3 site visits)
 - 2009 and beyond: 12 minimum planned
 - Pre-licensing visits and construction inspections will be conducted more frequently in the future

Summary of 2007 Inspection Findings

- FY2007 (Oct 2006-Sept 2007)
- 5 violations
 - Failure to post radiation area
 - Failure to implement ground H₂O monitoring
 - Failure to perform settlement monitoring
 - Exceedance of annual production limits
 - Expired waste disposal agreement

Summary of 2007 Inspection Findings, cont.

- 4 Licensee Event Reports
 - 2 significant spills
 - 1 groundwater excursion
 - 1 exceedance of annual radon flux limit on tailing pile
- 1 Unresolved item
 - Shipping of empty containers

Summary of 2007 Inspection Findings, cont.

- 3 Non-Cited Violations
 - Failure to use a RWP resulting in a uranium intake by employee
 - Failure to survey a container prior to shipment
 - Failure to collect all monitoring well samples

Licensee Fees

10 CFR 170.31 Schedule of Materials Fees

- 2 categories of UR licensees in use
- Cat 2.A(2)(b) for Active UR Facilities
- Cat 14.A for UR facilities in Decommissioning
- Both categories are “full cost” recovery

Licensee Fees, cont.

- Full cost recovery
 - Billed for hourly inspection and licensing actions taken
- Different from annual fee

Licensee Fees, cont.

- Who is billable?
 - Qualified inspectors (inspections, reports)
 - Project Managers (licensing, reviews)
 - Specialists (hydrogeologists)
- Branch Chief (no charge to licensee)
 - BC observes inspectors and tours the site
- Hourly rate of \$258 (will probably change to \$238/hr)

Licensee Fees, cont.

Annual Fees

- For Operating UR Facilities only
- 10 CFR 171.6 2.A.(2)(b) Class II facilities
- Currently \$18,700 annual

Licensee Fees, cont.

EXAMPLE: Operating ISL Facilities

- Annual Fee 10 CFR 171.16
- Category 2.A(2)(b) Class II Facilities
- Currently = \$18,700

AND

- Hourly Rate for inspection and licensing actions
- Currently \$258/hr (soon to be \$238/hr)

Licensee Fees, cont.

EXAMPLE:

Former UR Sites in Decommissioning

- 10 CFR 170.31 Cat 14.A
- No annual fee
- Charged for inspection and licensing activities at hourly rate \$258/hour

Licensee Fees, cont.

- Proposed annual fee rule published every January
- Licensees have a chance to comment!
- Revised rule usually becomes effective July or August of each year

Licensee Fees, cont.

Billing Contact

Billy Blaney, NRC HQ
(301) 415-5092

Administrative Changes to Licenses

- Clean up your license!
- Do you know what your license commits you to?
- Submit changes during other necessary amendments (i.e. annual financial assurance update)
- Save time for license reviewers and cost savings for licensee

UR Reports to a New Branch in RIV

Nuclear Materials Safety Branch-B

Jack E. Whitten, Chief

(817) 860-8197

Also:

– Bob Evans, Sr. Health Physicist

(817) 860-8234

– Linda Gersey, Health Physicist

(817) 860-8299



STATUS OF RULEMAKING: GROUNDWATER PROTECTION AT *IN SITU* LEACH (ISL) URANIUM EXTRACTION FACILITIES

Ron Linton, Project Manager/Hydrogeologist
Uranium Recovery Licensing Branch
U.S. Nuclear Regulatory Commission

- I. Rulemaking activities
- II. Rulemaking schedule
- III. Items of interest

I. Rulemaking: 2006

- Commission Direction: SRM-COMJSM-06-0001, March 24, 2006
 - Directed staff to initiate rulemaking
 - Specifically tailored to groundwater protection at ISLs
 - Focus on elimination of dual regulation
 - Defer active regulation of groundwater programs
 - Required proposed rule to Commission by January 2007
 - Directed staff to discuss implementation of interim measures with stakeholders
 - Pursue MOUs with states
 - Exercise enforcement discretion

I. Rulemaking: 2006 (cont.)

- June 14, 2006 – First rule working group meeting
 - NRC staff and OAS staff working group members
- June 20, 2006 – NRC letter to EPA
 - NRC requests EPA confirm UIC rules are the appropriate standards
- June 29, 2006 – Public meeting and workshop on rulemaking
 - Following NMA/NRC Workshop
- August 3, 2006 – EPA/NRC meeting
 - EPA letter to NRC expressing concern using UIC regulations as standards for rule

I. Rulemaking: 2006 (cont.)

- August 15, 2006 – EPA/NRC meeting on NRC proposed rulemaking path
 - EPA did not agree on UIC regulations as basis for groundwater protection
 - UMTRCA regulations are appropriate 40 CFR Part 192 and 10 CFR Part 40, Appendix A
 - Regulation of ISLs under UIC program in nonauthorized States
- September 16, 2006 – Working group meeting
- November 28, 2006– Commission informed

I. Rulemaking: 2007

- February 12, 2007 – Briefing of ACNW Status of ISL Rule
 - Discuss EPA concerns
- February 21, February 26 and March 12, 2007 - EPA/NRC meetings
 - Rule language and path forward
 - Restoration standard Appendix A, Criterion 5
 - Use of UIC language
 - Table 5c: Out-of-date for some constituents

I. Rulemaking: 2007 (cont.)

- March 15, 2007 – EPA/NRC/NMA public meeting
 - Discuss EPA concerns using UIC restoration standards relayed to industry
 - Review Appendix A as the primary standard (background or MCL)
 - Review Appendix A as the secondary standard (ACLs)
- March 28, 2007 – EPA/NRC meeting
- April 10, 2007 – ACNW briefing
- April 30, 2007 – COMSECY 07-0015
 - NRC staff proposed path forward for rulemaking on groundwater protection at ISLs
- May 9, 2007 – ACNW letter on rulemaking to Chairman with recommendations

I. Rulemaking: 2007 (cont.)

- June 8, 2007 – SRM COMSECY 07-0015, “Path Forward For Rulemaking On Groundwater Protection At In Situ Leach Uranium Extraction Facilities”
 - The Commission approved resumption of the rulemaking process for groundwater protection at ISL facilities to conform to 40 CFR Part 192
 - The Commission required the staff to–
 - Engage interested stakeholders through public workshops
 - Work closely and cooperatively with EPA
 - Remain diligent in working with EPA and appropriate States to establish appropriate standards to protect public health, safety and the environment
 - Reduce and preferably eliminate dual regulation

I. Rulemaking: 2007 (cont.)

- August 6 and September 12, 2007 – ISL rule working group meeting
 - Working group expanded to include EPA & CRCPCD
 - Draft of rule
- October 24 and December 5, 2007 – EPA/NRC meetings
 - Groundwater restoration language from Appendix A
 - UIC rule language can be used in new ISL rule
 - How to keep Table 5c up-to-date
- December 17, 2007 – ACNW&M briefing on ISL rule status

I. Rulemaking: 2008

- 1/24/08 – EPA/NRC meeting
 - Issues resolved
- 2/21/08 – ISL working group meeting
 - Continued work on draft rule language
- Current – Memorandum on Status of Development of Proposed Rule for Groundwater Protection at In Situ Leach Uranium Recovery Facilities
- Current – Draft Statement of Considerations

II. Rulemaking Schedule

- Proposed rule to Agreement States – July 2008
- Proposed rule to Commission – October 2008
- Proposed rule published – January 2009?
- Stakeholder workshops during comment period

III. Items of Interest Rule Topics

- Definitions
- Site characterization
- Pre-operational monitoring
- Well field design and construction requirements
- Operating, monitoring, and reporting requirements
- Mechanical integrity
- Post-operational groundwater quality restoration
- Plugging and abandonment
- Corrective action

III. Items of Interest

- Restoration based on 40 CFR Part 192 and 10 CFR Part 40, Appendix A
- Use of NUREG-1569 and UIC language
- Groundwater protection for uppermost aquifer
- Table 5c vs. current EPA MCLs
- NRC will update guidance in NUREG-1569



PATHWAY TO A URANIUM MILL LICENSE – AN INDUSTRY PERSPECTIVE

Alan Kuhn, PhD, PE, RG
Senior Principal Consultant
Director, Uranium Services
Kleinfelder

Louis Bridges, PhD, PWS
Principal Professional
Kleinfelder

For over a quarter century, no one thought seriously about licensing a new uranium mill. Consequently, old licensing rules have remained in place, untried and neglected while old mills were closed and the industry struggled to sustain a pulse. Now the heartbeat of uranium has quickened, and the industry wants new mills. But until recently, no one has implemented the existing rules for licensing a new conventional mill, making the pathway to a new mill license appears hard to determine. Obstacles in the licensing path include lack of precedent, lack of experience, a large number of mostly outdated guidelines, and a legacy of environmental issues.

To chart a path for mill licensing, a six-task approach has been developed and is being employed for two new uranium mill licenses (Figure 1). This approach is based on the NRC's Regulatory Guides 3.5 and 3.8, 4.14 and 10 CFR 40 Appendix A criteria and 10 CFR 51, and on NUREGs 1620 and 1748. Other NRC documents provide specific guidance related to licensing and mill site closure.

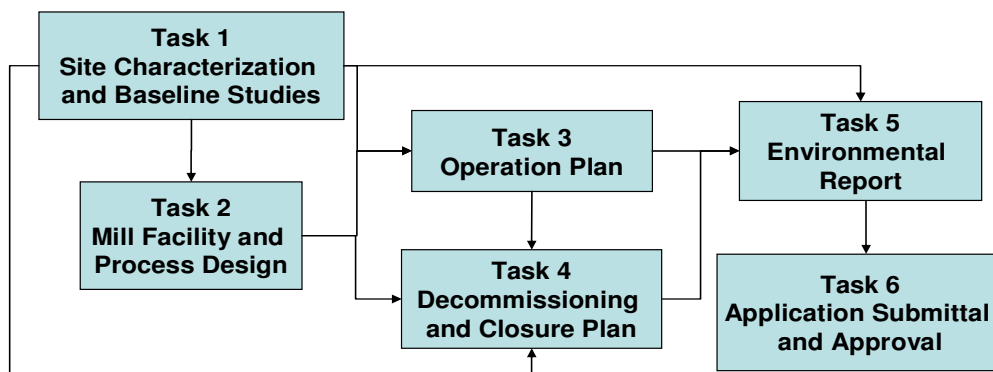


Figure 1 – The Six-Task Approach to Uranium Mill Licensing

The six tasks are:

1. Site Characterization and Baseline Investigations
 - Topographic base map
 - GIS data base
 - Socioeconomic, Demographic, Environmental Justice studies
 - Geologic and geotechnical characterization
 - *Groundwater investigations*
 - *Surface water investigations*
 - *Meteorological characterization*
 - *Air quality sampling*
 - Wetland and Waters-of-the-US delineation
 - Soils sampling
 - *Vegetation surveys and sampling*
 - *Wildlife surveys and Biota Sampling*
 - Archeological and Cultural surveys
 - *Radiological survey*
 - Non-radiological sampling

Italicized activities require data collection over a 12-month period.
2. Mill Facilities Design
 - Water balance
 - Mill circuit
 - Tailing containment
3. Operations Planning
 - Air and radiological modeling
 - Environmental monitoring
 - Radiological health and safety plans
 - Non-radiological health and safety plans
4. Decommissioning and Closure Planning
 - Mill decontamination and demolition
 - Tailing stabilization and closure
5. Environmental Report Preparation
 - Description of the site
 - Description of the mill
 - Proposed and alternative actions
 - Impacts and mitigations
6. Application Submittal and Approval
 - Agency interactions
 - Other permits
 - Public involvement

The tasks are structured for each site in the Summary Work Plan, and each activity involving original data collection is conducted in accordance with a task Work Plan. Each Work Plan includes a description of the purpose and scope of the activity; the data quality objectives;

technical procedures to be used; and quality assurance requirements including personnel qualifications, documentation, and data validation.

The tasks are performed generally in serial order, but substantial overlap occurs, and considerable time can be saved by conducting some task elements in parallel. A critical path, which can vary from one project to another, is defined through the six tasks. The critical path is set by time-critical baseline data collection activities through Task 1, but it is more variable and site-specific through Tasks 2-5 until it tracks the regulatory approval path through Task 6. In the best-case scenario, Task 1 requires 15 months and the total time from beginning of Task 1 through issuance of a mill license is approximately four years. Many factors can cause the time-line to extend beyond four years. While some of these factors are beyond the applicant's control, the licensing time-line can be shortened by several measures, as illustrated in Figure 2:

- Consulting early and frequently with the regulatory agencies
- Initiating time-critical baseline data collection as early as possible
- Performing tasks in parallel
- Taking the initiative in proposing courses of action to the regulators
- Implementing a pro-active public involvement program

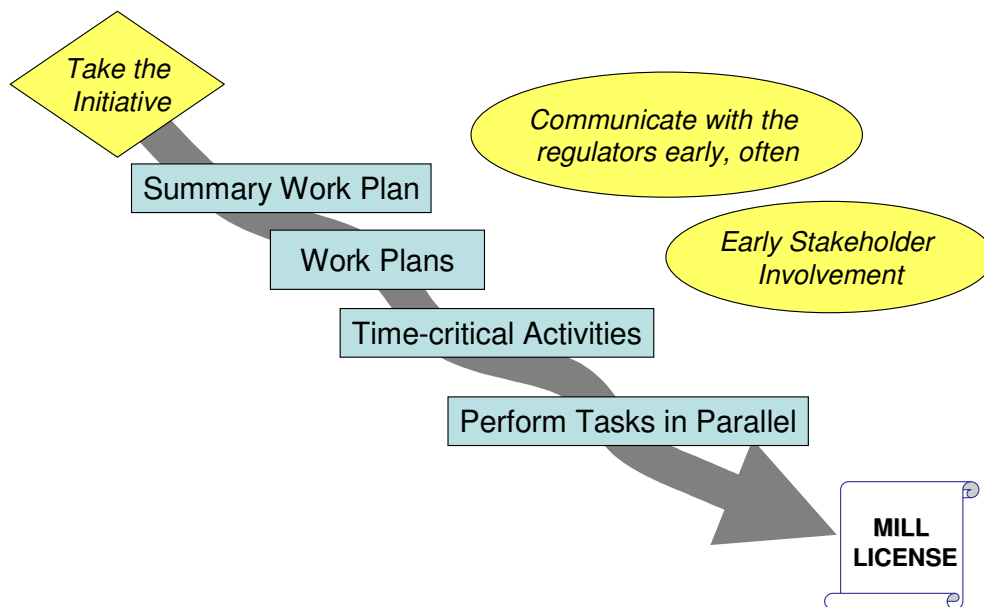


Figure 2 –Facilitating the Uranium Mill Licensing Process

The NRC and agreement states rules and guidelines are clear in the priorities of mill licenses – public safety and the environment must be protected during operations and after closure. The pathway to a new mill license is straightest when these protections take priority in implementing the six-task approach and when the applicant takes the initiative in charting its licensing path with the regulatory agencies.



The Uranium Recovery Generic Environmental Impact Statement

**James Park
Project Manager
Environmental Review Branch**

Objectives

- **Background**
- **Stakeholder Issues**
- **Approach**
- **Addressing
Stakeholder Issues**
- **Path Forward**

Background

- **Situation**
- **Basis: CEQ Regulations**
 - “Broad Actions” [40 CFR 1502.4(a) – (d)]
 - Tiering [40 CFR 1502.20 and 1508.28]
- **Notice of Intent (July 24, 2007)**
- **Scoping Period (July 24 – November 30, 2007)**

Issues Identified By Stakeholders

- **Affected environment and environmental impacts are not generic**
- **Site-specific environmental reviews will be cursory**
- **Public participation will be limited in site-specific environmental reviews**

Approach

- Describe and evaluate environmental impacts from in-situ leach uranium recovery process
- For site-specific environmental documents
 - Incorporate by reference GEIS background information
 - Apply GEIS conclusions to the extent applicable

Approach (cont'd.)

- **Describe affected environment and evaluate impacts on a regional basis**
- **4 regions identified**
- **Address environmental resource areas identified in NUREG-1748**

Addressing Stakeholder Issues

- **Regional approach to assessing environmental impacts**
- **Comprehensive site-specific reviews that apply GEIS conclusions as applicable**
- **NRC commitment to issue draft EAs for public comment**

Path Forward

- **Issue draft GEIS for public comment**
- **Hold meetings to receive public comments**
- **Address public comments in preparation of final GEIS**
- **Issue final GEIS**

Questions



Keys to the Nuclear Regulatory Commission Hearing Process for Uranium Recovery Facilities

Prepared for the Annual National Mining
Association/Nuclear Regulatory Conference on Uranium
Recovery

Denver, Colorado (2008)

Prepared by Christopher S. Pugsley, Esq.
Thompson & Simmons, PLLC

Introduction

- Uranium Recovery Companies Seeking Licenses or License Amendments in Non-Agreement States for the Following Will Require Nuclear Regulatory Commission (NRC) Approval:
 - Uranium Recovery Licenses for New Conventional Mills or In Situ Recovery Projects;
 - Restart of Existing Facilities on Standby;
 - License Amendments to Construct and/or Operate New Projects on Licensed Sites

Introduction

- **New Project, Project Restart, and Construction of New Project Facilities Potentially May Be Subject to an Administrative Hearing;**
- **NRC Administrative Hearings for Uranium Recovery are Subject to New Hearing Procedures That Differ Greatly from Those Used in Prior Hearings Such As:**
 - **Hydro Resources, Inc. (Crownpoint Uranium Project)**
 - **International Uranium (USA) Corporation (now “Denison Mines”) Alternate Feed License Amendments**

Development of New Procedures

- Prior to 2003, NRC Administrative Hearings for Uranium Recovery Projects Were Considered “Informal Hearings” With Several Distinct Characteristics:
 - 10 CFR Part 2, Subpart L Regulations;
 - Two-Three Judge Panels Consisting of a Presiding Officer and Special Technical Assistants;
 - All Pleadings and Argument, Unless Otherwise Ordered, Submitted in Writing;
 - Discovery Expressly Prohibited

Development of New Procedures

- After 2003, New NRC Administrative Hearings Are Still Considered “Informal,” But:
 - 10 CFR Part 2, Subpart G & Subpart L Procedures;
 - While Some Filings are Written, Unless Otherwise Agreed Upon by the Parties, the Proceedings are Oral;
 - Limited Discovery Allowed

Hearing Process

- To Best Understand NRC's New Hearing Procedures, a Critical Path for a Model Hearing Should be Assessed:
 - Preliminary Matters;
 - Hearing Request;
 - Standing & Admissible Contentions;
 - Preliminary Motions;
 - Mandatory Disclosures;
 - Witness Testimony;
 - Initial Decision;
 - Appeals

Preliminary Matters: Proper Service

- Proper Service of Documents:

- Commission Policy Dictates that ALL FILINGS Shall be Submitted Through NRC's E-Filing System;
- The Presiding Officer and/or the Commission May Issue Orders Permitting Alternative Methods of Service:
 - First Class Mail;
 - Courier/Express Mail;
- Filing is Considered Complete When:
 - Electronic Submission is Sent (i.e., Last Act Necessary to Transmit Documents Electronically);
 - Deposit of Hard Copy in Mail;
 - All Methods of Filing are Complete in the Case of Multiple Methods of Filing (i.e., Electronic & Hard Copy)

Preliminary Matters: Proper Service

- Proper Service of Documents:
 - Documents Are Considered Timely Filed When Submitted By:
 - 5:00 pm for Documents Submitted in Person or By Expedited Service;
 - 11:59 pm for Documents Filed Electronically
 - NOTE: THE PRESIDING OFFICER CAN CHANGE ANY OF THESE REQUIREMENTS

Preliminary Matters: Document Requirements

- NRC Has Imposed Specific Requirements for Documents: All Documents Must Have:
 - Appropriate Docket Number and Caption;
 - Certificate of Service;
 - Margins of Not Less Than One Inch;
 - Appropriate Signature With Statement of Authority:
 - Electronic Documents Must Have Phrase “Signed By”
 - Paper Documents:
 - Stapled or Bound on Upper Left Side;
 - Ink Signature

Preliminary Matters: Computation of Time

- Standard Time Computation Running From the Day After Filing to the Due Date Applies Except if the Last Day Falls on:
 - Weekend Day;
 - Federal Legal Holiday;
 - Emergency Federal Government Closure Day
- **NOTE: ALWAYS ERR ON THE SIDE OF CAUTION: IF YOU DO NOT KNOW WHETHER A DAY FALLS ON ONE OF THE ABOVE, FILE THE DOCUMENTS THE LAST DAY NOTED ABOVE**

Hearing Request

- An NRC Administrative Hearing Can Only Be Triggered Upon a Request for a Hearing from an Interested Stakeholder:
 - Member(s) of the Public;
 - Organizations or Groups;
 - Governmental Entities;
 - Cities;
 - Counties;
 - States;
 - Tribes
- Hearing Requests Must Meet Explicit Regulatory Requirements

Standing

- In Order to Be Granted an NRC Administrative Hearing, a Proposed Intervenor Must Demonstrate Standing Under NRC Regulations (10 CFR §2.309(d)):
 - Traditional Tenets of Standing;
 - Injury-in-Fact;
 - Causal Nexus;
 - Redressibility
 - A request for hearing or petition for leave to intervene must state:
 - (i) The name, address and telephone number of the requestor or petitioner;
 - (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
 - (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
 - (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

Standing

- Standing May Be Demonstrated as Follows:
 - Standing as a Matter of Injury-in-Fact (Traditional);
 - Standing Based on “Proximity-Plus:”
 - Presumption in Reactor Cases, Not Materials Cases;
 - Materials Case Standard: “Significant Source of Radioactivity Producing an Obvious Potential for Offsite Consequences”
 - Representational or Group Standing

Admissibility of Contentions

- A Proposed Intervenor Also Must Offer at Least One Admissible Contention to be Granted a Hearing (10 CFR § 2.309(f)):
 - A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
 - (i) Provide a specific statement of the issue of law or fact to be raised or controverted, *provided further*, that the issue of law or fact to be raised in a request for hearing under 10 CFR 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;
 - (ii) Provide a brief explanation of the basis for the contention;

Admissibility of Contentions

Admissible Contentions (Continued):

- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing;
 - Provide references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

Interlocutory Review of Standing/Contentions Determinations

- Appeals of Determinations Regarding Standing & Contentions Are Permitted:
 - Appeals Must be Filed Within 10 Days of Service of an Order Regarding Standing/Contentions;
 - Response to Appeals Must Be Filed Within 10 Days of Service of the Appeal:
 - All Appeals Must Have a Notice of Appeal and Accompanying Legal Brief

Preliminary Motions

- As a Matter of Regulation, Parties are Entitled to File Preliminary Motions:
 - All Motions Must Be Filed No More Than 10 Days After the Act Which is Being Addressed;
 - All Responses to Motions Must Be Filed Within 10 Days of Service of a Motion
 - NOTE: 10 CFR § 2.323 REQUIRES THAT THE MOVING PARTY OR COUNSEL CERTIFY THAT A SINCERE EFFORT HAS BEEN MADE TO RESOLVE THE SUBJECT OF THE MOTION

Preliminary Motions

- Other Motions May Be Filed in These Proceedings:
 - Motion for Stay:
 - Stay the Effectiveness of an NRC Staff Action;
 - Without an Actual Action, Motion for Stay is Premature;
 - Criteria for Stays Are Similar to Those Applied in Civil Cases;
 - Criteria for Stays Are Difficult to Satisfy
 - Motion for Summary Disposition:
 - Similar to Summary Judgment Motions in Civil Cases;
 - Motion for Cross-Examination:
 - Description of Issue
 - Objective to Be Achieved;
 - Proposed Line of Questioning

Additional Notes

- **Standing and Admissible Contentions Are Not Intended to Reach the Merits of a Particular Argument;**
- **Threshold for Standing is Extremely Low;**
- **Only One Admissible Contention Will Trigger a Hearing Assuming Standing is Shown**

Administrative Hearings

- **In the Event a Hearing is Granted, NRC has Delineated Specific Procedures for the Conduct of Such Hearings;**
- **NRC's New "Informal" Hearing Regulations Encourage Advance Preparation by License Applicants & Licensees;**
- **A Thorough Understanding of the Hearing Procedures and Required Submissions Will Help Reduce Litigation Costs**

Preliminary Determinations

- Initially, an Applicant Must Determine Whether the Requested Licensing Action Falls Under Subpart L:
 - New Projects or License Amendments Use Subpart L;
 - Direct or Indirect Change/Transfer of Control Applications Use Subpart M
- If a Subpart L Hearing is Indicated, Then All Parties Must Agree on Hearing Procedures:
 - Parties May Agree on the Use of Written Proceedings as in Pre-2003 Hearings
- NOTE: THE DEFAULT PRESUMPTION IS ORAL HEARINGS
- The Atomic Safety and Licensing Board (ASLB) Will Then Appoint a Panel Consisting of a Presiding Officer (Administrative Law Judge) and at Least One Technical Assistant

Preliminary Filings

- New Subpart C Regulations Require an Initial Mandatory Disclosures or Discovery (10 CFR §2.336: General Discovery):
 - Within 30 Days of the Issuance of an Order Granting a Hearing, the Following Must Be Disclosed or Provided:
 - (1) The name and, if known, the address and telephone number of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;
 - (2)(i) A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions, provided that if only a description is provided of a document or data compilation, a party shall have the right to request copies of that document and/or data compilation, and
 - (3) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.
 - NOTE: IF DOCUMENTS ARE AVAILABLE IN OTHER PUBLIC SOURCES, MUST SUBMIT LOCATION, TITLE, AND PAGE REFERENCE

Preliminary Filings

- Important Notes Regarding Initial Disclosures/Discovery:
 - 10 CFR § 2.336(d): Duty to Disclose is Ongoing (i.e., Subsequently Developed or Obtained Documents or Information Must Be Disclosed Within 14 Days);
 - 10 CFR § 2.336(b): NRC Staff Has Mandatory Disclosures;
 - 10 CFR § 2.336(f): Initial Disclosures Constitute Only Permissible Discovery in Subpart L Hearings;
 - 10 CFR § 2.1203: NRC Staff Must Develop & Submit a Hearing File

Hearing Submissions: Written Testimony

- **All Parties are Required to File Initial Written Statements of Position and Written Testimony with Supporting Affidavits on Dates Set by the Presiding Officer;**
- **Within 20 Days of the Filing of Initial Testimony, Written Responses and Rebuttal Testimony Due 20 Days from Service of Initial Testimony**

Hearing Submissions: Proposed Questions

- **Questions Proposed by All Parties to Be Asked by the Administrative Panel Must Be Submitted No Later Than 20 After Submission of Initial Testimony;**
- **Questions Proposed in Response to Rebuttal Testimony Must Be Submitted No Later Than Seven Days After Service of the Rebuttal Testimony:**
 - **If Either of These Dates are Less Than 5 Days From the Date of the Oral Hearing, Then Questions Must Be Submitted No Later Than 5 Days Prior to the Hearing Date**

Hearing Submissions: Proposed Questions

- Important Notes Regarding Proposed Questions:
 - 10 CFR § 2.1207(a)(3)(iii) & (b)(6): Proposed Questions are Asked Only by the Panel and NOT BY THE PARTIES (i.e., No Cross-Examination):
 - Parties Can Move for Cross-Examination:
 - Since Cross-Examination is an Exception to the Hearing Procedures, Concern Lies With the Inability to Ask Spontaneous Questions & Level of Knowledge of the Technical Aspects of Uranium Recovery by Hearing Panel:
 - Licensees, License Applicants, NRC Staff Are Forced to Anticipate Every Possible Scenario in Advance Rather Than Ask Questions if Issues Are Raised at Oral Hearings
 - 10 CFR § 2.1207(b)(5): A Witness Unable to Appear Can Submit Written Testimony But Will be Subject to Questions to be Answered in Writing

Important Notes: Summary

- All Parties May Agree to Have a Hearing Based on Written Submissions:
 - 10 CFR § 2.1206: If One Party is Not in Favor of a Written Hearing, Then Default Assumption is Oral Hearing
- Parties are Entitled to File Preliminary Motions:
 - 10 CFR § 2.1213: Motion for Stay;
 - 10 CFR § 2.1204(b): Motion for Cross-Examination
- Interlocutory Appeals Continue to be Disfavored

Conclusions

- **NRC's Administrative Hearing Processes for Uranium Recovery Facilities Are Just Now Being Tested;**
- **As Applications Are Docketed & Hearings Are Requested, Additional Experience Will Assist in the Efficient Management of the Hearing Process;**
- **License Applicants Should Prepare for Potential Hearings Well In Advance & Take Advantage of the Prescriptive Requirements Provided in 10 CFR Part 2**