



Ute Mountain Ute Tribe

Environmental Programs Department

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October 4, 2012

Rusty Lundberg
Director
Utah Division of Radiation Control
195 N. 1950 W.
Salt Lake City, Utah 84116
rlundberg@utah.gov

VIA U.S. MAIL AND EMAIL

Re: Transfer Action and New Groundwater Enforcement Action UGW12-03, White Mesa Uranium Mill

Dear Mr. Lundberg:

As you know, Ute Mountain Ute Tribal staff and attorneys were encouraged earlier this year after meeting in March in Salt Lake City and discussing work and information sharing between the Tribe and the DEQ divisions. As you also know, the Tribe has committed significant resources this year monitoring groundwater contamination trends at the White Mesa Mill facility and filing public comments on the White Mesa Uranium Mill Corrective Action Plan UGW12-04 ("August 17, 2012 Comments"), and we have consistently sought to engage your division in direct staff-level government-to-government consultation regarding ongoing Tribal concerns with the operation and regulation of the White Mesa Mill facility.

Tribal staff receives notices on DRC's Radiation Issues listserve, and on September 13, 2012, we reviewed the listserve link to new documents relating to the White Mesa Mill facility. We were surprised and troubled to find documentation of at least two DRC actions that are relevant to Tribal concerns about the operation and regulation of the WMM facility, that were ongoing when we met in March of 2012¹, and which DRC failed to disclose to the Tribe during that staff-level meeting or subsequently.

Although we are disappointed and frustrated by DRC's failure to notify and engage Tribal Staff regarding these actions, we think it is important to continue efforts between our departments to have an open line of communication and to share information and concerns about the operation of

¹ For example, Denison Mines (USA) Inc. documented a conference call about the pH exceedance enforcement action on March 12, 2012, which was the same week we held the staff-level meeting between our departments. [Plans to Investigate pH Exceedances in Perched Groundwater Monitoring Wells, White Mesa Uranium Mill, Blanding, Utah](#) at § 1 (noting calls on December 5 and 19, 2011 and March 12, 2012).



and regulatory actions with respect to the White Mesa Mill facility. To further that effort, we now write you to request documents, explanation, and specific actions regarding the recently-posted DRC actions.

A. Transfer of License from Denison Mines (USA) Inc. to Energy Fuels, Inc./Energy Fuels Resources (USA) Inc.

According to the Statement of Basis issued in August 2012 (posted to the DRC website on or after August 24, 2012), on June 17, 2012, you authorized Denison Mines (USA) Inc. (“DUSA”) to “indirectly transfer control” of License No. UT 1900479 and Ground Water Discharge Permit UGW370004 for the White Mesa Mill to “Energy Fuels, Inc.” The amended License and Permit now reflect the licensee and permittee as “Energy Fuels Resources (USA) Inc.” The Tribe has not been able to access any other documentation of the June 17, 2012 decision or the amendments that would allow it to confirm the exact nature of the relationship between the Energy Fuels entity or entities (“Energy Fuels”) and the former licensee/permittee, DUSA, or how the indirect transfers may impact the financial wherewithal of the licensee/permittee of the White Mesa Mill to fulfill existing and pending regulatory obligations. The Tribe is hopeful that DRC did significant work evaluating the license transfer in accordance with Utah Admin. Code R313-19-34(2), including, among other things, evaluating and documenting Energy Fuels’ capacity: (1) to commit to all license conditions and applicable regulations (including meeting financial surety requirements and completing open corrective action plans and enforcement actions); (2) to accept full responsibility for the decommissioning of the White Mesa Mill, including contaminated facilities and equipment; and (3) to ensure that, through the transfer, the radiation safety aspects of the program (with a focus on health and safety aspects) are not degraded. See Consolidated Guidance About Materials Licenses, Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses, NUREG – 1556, §§ 5, 5.5, 5.6, Vol. 15 (2000).

In prior submissions to the DRC, including the Tribe’s comprehensive comments on Radioactive Materials License Renewal DRC-045 (“December 16, 2011 Comments”) and the August 17, 2012 Comments, and during the meeting in March of 2012, the Tribe has documented and supported its concerns about groundwater contamination, air deposition/surface contamination, control of contamination from alternative feed material, grossly insufficient minimum surety estimates for reclamation and specific corrective action plans, and other deficiencies in the reclamation plans for the White Mesa Mill facility. Although some of these concerns are with new proposed licenses, permits, and corrective action plans, all of these concerns are relevant to your review and approval of the transfer between DUSA and Energy Fuels. The Tribe now requests that DRC provide to the Tribe documentation and an explanation of the DRC’s analysis of the transfer and the basis for your determination of the items delineated above.

B. Stipulated Consent Agreement, Docket UGW12-03

On September 13, 2012, after the close of the public comment period on White Mesa Mill Stipulation and Consent Agreement and Corrective Action Plan UGW12-04, DRC posted Stipulated Consent Agreement, Docket UGW12-03 to address out-of-compliance parameters and decreasing pH trends in groundwater monitoring wells at the White Mesa Mill. This September 2012 posting



is the first time the Tribe has received any information about this significant groundwater contamination issue that began as early as May of 2011. From our initial review of this Stipulated Consent Agreement, we can express significant concern that the trend of out-of-compliance parameters and decreasing pH trends is present in some of the same monitoring wells that contain contamination from the chloroform and nitrate/chloride plumes that are subject to separate corrective action plans. The spatial similarity of the multiple contamination plumes and the combination of the constituents in the plumes raise serious concerns about leakage from Tailings Cells 1, 2, and 3. *See also* December 16, 2011 Comments § III(A) (detailing concerns about leakage from these Tailings Cells and providing an engineering analysis of likely liner failure).

In August of 2012, the Tribe filed public comments on the White Mesa Mill Corrective Action Plan UGW12-04 demanding, among other things, that DRC require DUSA to identify the source of the nitrate/chloride plumes, and specifically, to evaluate Tailings Cells 1, 2, and 3 as sources. We are at a loss to understand why DRC, in developing and soliciting public comment on subsequent Corrective Action Plan UGW12-04 to address the nitrate/chloride plume, did not inform the Tribe or the public at large about the ongoing pH trends and out-of-compliance parameters being addressed by DRC (without public notice or opportunity for public comment) under SCA UGW 12-03. In order to be effective, a CAP to address the groundwater contamination at the White Mesa Mill must address all contaminants and parameters of concern comprehensively, and not in piecemeal fashion.

With the new information from the UGW 12-03 SCA, the Tribe is now concerned that Energy Fuels will try to avoid addressing the multiple plumes of contamination by petitioning for alternate corrective action concentration limits on individual parameters and revising groundwater compliance limits on monitoring wells. See Plans to Investigate pH Exceedances in Perched Groundwater Monitoring Wells, White Mesa Uranium Mill, Blanding, Utah at § 1.2 (noting DUSA's intent to seek revised groundwater compliance limits); *see also* August 17, 2012 Comments at § II(D)(2) (noting that the proposed corrective action plan for the nitrate/chloride plume contemplate seeking alternative corrective action concentration limits). DRC cannot allow Energy Fuels to avoid responsibility for multiple contamination plumes by seeking to modify groundwater standards at the White Mesa Mill. *See* August 17, 2012 Comments at § II(D)(2) (explaining DRC's responsibility for ensuring that limits on groundwater contamination are protective of public health and the environment). Instead, DRC must ensure that Energy Fuels: (1) takes immediate actions to prevent further contamination from the multiple plumes; (2) conducts a source analysis taking into account the spatially overlapping plumes and all the constituents of the multiple plumes; and (3) performs a full cleanup of the contamination and removes the contamination source from the White Mesa Mill facility.

Given the spatial location of the multiple contamination plumes and building evidence that the combination of constituents in the many plumes indicates leakage from Tailings Cells 1, 2, and 3, the Tribe now demands that DRC consolidate the two existing corrective action plans (UGW12-04 and UGW20-01) and the new SCA for the out-of-compliance parameters and decreasing pH trend, formulate a corrective action plan that requires analysis of the Tailings Cells as the source of the contamination, and open that corrective action plan for public comment.



The Tribe looks forward to continued communication regarding groundwater and other issues associated with the operation and regulation of the White Mesa Mill facility.

Sincerely,



Scott Clow
Environmental Programs Director
Ute Mountain Ute Tribe

Cc: Gary Hayes, Chairman, Ute Mountain Ute Tribe
Peter Ortego, General Counsel, Ute Mountain Ute Tribe
Celene Hawkins, Associate General Counsel, Ute Mountain Ute Tribe
H. Michael Keller, Special Counsel, Ute Mountain Ute Tribe
Alan Matheson, Environmental Advisor to Governor Herbert
Amanda Smith, UT Department of Environmental Quality
Bryce Bird, Director, UT Division of Air Quality

