

Thornton, Marisa

Subject: FW: EPA OGC Listening Session Question from Ute Tribe

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:24 AM
To: Collections.SubW
Subject: FW: EPA OGC Listening Session Question from Ute Tribe

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-1272 (ph)
202-564-5603 (fax)
stahle.susan@epa.gov

From: Averback, Jonathan
Sent: Monday, December 01, 2014 1:20 PM
To: Moffa, Anthony; Ward, W. Robert; Logan, Paul
Cc: Chase, JoAnn; Stahle, Susan; Doster, Brian
Subject: Re: EPA OGC Listening Session Question from Ute Tribe

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From: Moffa, Anthony
Sent: Friday, November 28, 2014 3:08 PM
To: Ward, W. Robert; Logan, Paul; Averback, Jonathan
Cc: Chase, JoAnn
Subject: EPA OGC Listening Session Question from Ute Tribe

Dear Robert, Paul, and Jon,

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From: Stahle, Susan
Sent: Monday, December 01, 2014 1:59 PM
To: Rosnick Reid (Rosnick.Reid@epa.gov); Schultheisz, Daniel
Cc: Peake, Tom
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Sent: Friday, January 23, 2015 8:45 AM
To: Thornton, Marisa
Subject: Fw: EPA OGC Listening Session Question from Ute Tribe

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From: Moffa, Anthony
Sent: Monday, December 01, 2014 2:02 PM
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Hi Susan,

Thanks for your response. What you have said in here is probably more than enough for Avi to go on if the issue comes up (as we expect it will) this afternoon. I will make sure he gets this information. I may follow up with you afterwards for a more details depending on how the conversation goes.

The call-in number for the session is, and the code is. If you have an issue with getting on, feel free to text my cell, I will be in the room.

-Anthony

Anthony Moffa
Cross-Cutting Issues Law Office
Civil Rights and Finance Law Office
Office of General Counsel

U.S. Environmental Protection Agency

Moffa.Anthony@epa.gov

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Please consider the environment before printing this email.

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From: Peake, Tom
Sent: Monday, December 01, 2014 2:16 PM
To: Stahle, Susan
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Sue,
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Good luck.
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From: Rodman, Sonja
Sent: Wednesday, December 03, 2014 6:13 PM
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Subject: RE: EPA OGC Listening Session Question from Ute Tribe

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Attorney-Advisor
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202-564-1272 (ph)
202-564-5603 (fax)
stahle.susan@epa.gov

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Sent: Wednesday, December 03, 2014 6:13 PM
To: Stahle, Susan
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To: Averback, Jonathan; Moffa, Anthony; Ward, W. Robert; Logan, Paul

Cc: Chase, JoAnn; Doster, Brian; Rodman, Sonja
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Anthony Moffa

Thornton, Marisa

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From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:21 AM
To: Collections.SubW
Subject: FW: EPA OGC Listening Session Question from Ute Tribe

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Thornton, Marisa

Subject: FW: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:20 AM
To: Collections.SubW
Subject: FW: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

Susan Stahle
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From: Moffa, Anthony
Sent: Thursday, December 04, 2014 10:11 AM
To: Stahle, Susan; Rosnick, Reid
Cc: Jackson, Scott; Logan, Paul; Ward, W. Robert; Laumann, Sara; Mitre, Alfreda; Diaz, Angelique; Peake, Tom; Schultheisz, Daniel; Childers, Pat
Subject: RE: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

Thanks to everyone who was able to participate on rather short notice. The call was very helpful. As I mentioned, I will brief Avi and the OGC front office within the week and be sure to keep you in the loop as to what Avi's response to the tribe includes, as well as any next steps on your end.

Anthony Moffa
Cross-Cutting Issues Law Office
Civil Rights and Finance Law Office
Office of General Counsel
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Moffa.Anthony@epa.gov

CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.



Please consider the environment before printing this email.

-----Original Appointment-----

From: Moffa, Anthony

Sent: Tuesday, December 02, 2014 3:23 PM

To: Moffa, Anthony; Stahle, Susan; Rosnick, Reid

Cc: Jackson, Scott; Logan, Paul; Ward, W. Robert; Laumann, Sara; Mitre, Alfreda; Diaz, Angelique; Peake, Tom; Schultheisz, Daniel; Childers, Pat

Subject: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

When: Thursday, December 04, 2014 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Call-in Conf. Code:

See the location for call-in information.

Thornton, Marisa

Subject: FW: EPA OGC Listening Session Question from Ute Tribe

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:19 AM
To: Collections.SubW
Subject: FW: EPA OGC Listening Session Question from Ute Tribe

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From: Rosnick, Reid
Sent: Friday, January 9, 2015 6:27 AM
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From: Stahle, Susan
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FYI

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Sent: Monday, December 01, 2014 1:55 PM
To: Averback, Jonathan; Moffa, Anthony; Ward, W. Robert; Logan, Paul
Cc: Chase, JoAnn; Doster, Brian; Rodman, Sonja
Subject: RE: EPA OGC Listening Session Question from Ute Tribe

Hi Anthony –

I have been working on this project with my clients in the Office of Radiation and Indoor Air (ORIA) within the Office of Air and Radiation.

Our interactions with the Ute Mountain Ute Tribe began back in 2010 when EPA staff held a public meeting about the proposed rulemaking at the Tribe's facility in Utah. Since then, we have had extensive interaction with the Tribe on the proposed revisions to 40 CFR Part 61, Subpart W, National Emission Standards for Radon Emissions From Operating Mill Tailings, including a formal tribal consultation regarding this rulemaking and other matters with the Chairman and EPA (both Region 8 and HQ senior management and staff) in July 2014. I recently had a telephone conversation with Celene Hawkins and the Tribe's outside counsel to answer their questions prior to the Tribe submitting its comments on the proposed rule. We have enjoyed a good working relationship with the Tribe and hope that continues as we now work to finalize the revisions to the rulemaking.

Unfortunately I am just now seeing this email so that does not leave much time to brief Avi prior to this afternoon's meeting about our interaction with the Tribe on this rulemaking. I'd be happy to share whatever information I can prior to the call, or even afterwards, as is helpful for you.

If, possible, I would like to join the listening session by phone. Would you please send me the call-in information for that call?

Please let me know if I can provide you any further information or answer any questions you may have.

Thanks,

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-1272 (ph)
202-564-5603 (fax)
stahle.susan@epa.gov

From: Averback, Jonathan
Sent: Monday, December 01, 2014 1:20 PM
To: Moffa, Anthony; Ward, W. Robert; Logan, Paul
Cc: Chase, JoAnn; Stahle, Susan; Doster, Brian
Subject: Re: EPA OGC Listening Session Question from Ute Tribe

Anthony - I did not work on the the subpart W NESHAPS, but perhaps Susan Stahle is familiar with it. The White mesa Mill is not something I'm familiar with. - jon

From: Moffa, Anthony
Sent: Friday, November 28, 2014 3:08 PM
To: Ward, W. Robert; Logan, Paul; Averback, Jonathan
Cc: Chase, JoAnn
Subject: EPA OGC Listening Session Question from Ute Tribe

Dear Robert, Paul, and Jon,

As you may have heard, Avi is hosting a listening session with tribal attorneys this coming Monday in conjunction with the White House Tribal Nations Conference. In advance of that session, we were contacted by Celene Hawkins, an attorney for the Ute Mountain Ute Tribe, who indicated that she would like to discuss the Tribe's engagement with EPA on issues regarding the White Mesa Mill in southeastern Utah and the EPA's rulemaking activity on the Subpart W NESHAPS (Clean Air Act). She is concerned that the engagement did not conform with the agency's environmental justice policy. The Tribe's engagement with EPA began with a public comment on the proposed rule, which I am attaching to this email. Avi intends to respond by primarily addressing the process concerns (i.e. facilitating earlier pre-proposal engagement in the future), rather than the substance of the proposed rule at issue.

I understand that you may have been working on this issue with the Tribe. I am writing to inquire as to whether there is any additional information on our engagement with the Tribe that any of you think would be helpful to brief Avi on in advance of the listening session. If so, please feel free to send me an email or call me on my cell.

You are also all welcome to join the listening session (in person or on the phone). It is scheduled for Monday afternoon from 3:45-5:30pm. Please let me know if you will be joining, and I can provide you with the call-in information if you like.

Regards,

Anthony Moffa

Thornton, Marisa

Subject: FW: EPA OGC Listening Session Question from Ute Tribe

From: Rosnick, Reid
Sent: Friday, January 9, 2015 6:27 AM
To: Collections.SubW
Subject: FW: EPA OGC Listening Session Question from Ute Tribe

From: Stahle, Susan
Sent: Monday, December 01, 2014 1:59 PM
To: Rosnick, Reid; Schultheisz, Daniel
Cc: Peake, Tom
Subject: FW: EPA OGC Listening Session Question from Ute Tribe

FYI

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To: Ward, W. Robert; Logan, Paul; Averback, Jonathan
Cc: Chase, JoAnn
Subject: EPA OGC Listening Session Question from Ute Tribe

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I understand that you may have been working on this issue with the Tribe. I am writing to inquire as to whether there is any additional information on our engagement with the Tribe that any of you think would be helpful to brief Avi on in advance of the listening session. If so, please feel free to send me an email or call me on my cell.

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Regards,

Anthony Moffa

Thornton, Marisa

Subject: Fw: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing
Location: Call-in: Conf. Code:
Start: Thu 12/4/2014 9:30 AM
End: Thu 12/4/2014 10:00 AM
Show Time As: Tentative
Recurrence: (none)
Organizer: Moffa, Anthony

From: Rosnick, Reid on behalf of Moffa, Anthony
Sent: Friday, January 9, 2015 6:27 AM
To: Collections.SubW
Subject: FW: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing
When: Thursday, December 4, 2014 9:30 AM-10:00 AM.
Where: Call-in: Conf. Code:

-----Original Appointment-----

From: Moffa, Anthony
Sent: Tuesday, December 02, 2014 3:23 PM
To: Moffa, Anthony; Stahle, Susan; Rosnick, Reid
Cc: Jackson, Scott; Logan, Paul; Ward, W. Robert; Laumann, Sara; Mitre, Alfreda; Diaz, Angelique; Peake, Tom; Schultheisz, Daniel; Childers, Pat
Subject: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing
When: Thursday, December 04, 2014 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Call-in: Conf. Code:

See the location for call-in information.

Thornton, Marisa

Subject: FW: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

From: Rosnick, Reid

Sent: Friday, January 9, 2015 6:26 AM

To: Collections.SubW

Subject: FW: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

From: Moffa, Anthony

Sent: Thursday, December 04, 2014 10:11 AM

To: Stahle, Susan; Rosnick, Reid

Cc: Jackson, Scott; Logan, Paul; Ward, W. Robert; Laumann, Sara; Mitre, Alfreda; Diaz, Angelique; Peake, Tom; Schultheisz, Daniel; Childers, Pat

Subject: RE: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

Thanks to everyone who was able to participate on rather short notice. The call was very helpful. As I mentioned, I will brief Avi and the OGC front office within the week and be sure to keep you in the loop as to what Avi's response to the tribe includes, as well as any next steps on your end.

Anthony Moffa

Cross-Cutting Issues Law Office

Civil Rights and Finance Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-1087

Moffa.Anthony@epa.gov

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Please consider the environment before printing this email.

-----Original Appointment-----

From: Moffa, Anthony

Sent: Tuesday, December 02, 2014 3:23 PM

To: Moffa, Anthony; Stahle, Susan; Rosnick, Reid

Cc: Jackson, Scott; Logan, Paul; Ward, W. Robert; Laumann, Sara; Mitre, Alfreda; Diaz, Angelique; Peake, Tom; Schultheisz, Daniel; Childers, Pat

Subject: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

When: Thursday, December 04, 2014 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Call-in: Conf. Code:

See the location for call-in information.

Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:31 AM
To: Thornton, Marisa
Subject: Fw: Ute Mountain Issue

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:22 AM
To: Collections.SubW
Subject: FW: Ute Mountain Issue

Susan Stahle
Attorney-Advisor
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202-564-5603 (fax)
stahle.susan@epa.gov

From: Moffa, Anthony
Sent: Monday, December 01, 2014 6:22 PM
To: Stahle, Susan
Subject: Ute Mountain Issue

Hi Susan,

Sorry I missed your call. Avi did not get into much substance with Celene Hawkins at the listening session. He did commit to following up, however, so it would be good to speak with you and fill in some more details. I am in the office all week and am happy to meet in person or just speak on the phone.

-Anthony

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Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:33 AM
To: Thornton, Marisa
Subject: Fw: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

From: Rosnick, Reid
Sent: Friday, January 9, 2015 6:27 AM
To: Collections.SubW
Subject: FW: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

From: Childers, Pat
Sent: Wednesday, December 03, 2014 11:00 AM
To: Rosnick, Reid
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

No problem Reid,

Do you have your notes from July 10?

Also I have the letter we sent out but the follow up consultation never happened did it? My memory is clouding my Mountain Ute and Ute consultations a bit.

From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 8:02 AM
To: Childers, Pat
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

Thanks, Pat!

From: Childers, Pat
Sent: Wednesday, December 03, 2014 7:47 AM
To: Rosnick, Reid; Moffa, Anthony
Cc: Peake, Tom; Schultheisz, Daniel; Stahle, Susan
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

I will be glad to participate and have put it on my calendar for tomorrow .

From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 6:25 AM
To: Moffa, Anthony
Cc: Peake, Tom; Schultheisz, Daniel; Stahle, Susan; Childers, Pat
Subject: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

Hello Anthony,

I am the workgroup lead for the NESHAP Subpart W rule. I will not be able to attend tomorrow's conference call regarding the UMUT. I will be out of the office until Tuesday, December 16. However, I have copied my immediate management (Tom Peake, Dan Schultheisz) and the OAR Tribal contact (Pat Childers). All can speak to ORIA's engagement with the Tribe. I will forward the invitation to them. Please let me know if I can help before the end of today. Thanks

Reid

Reid J. Rosnick
US Environmental Protection Agency
Radiation Protection Division
202.343.9563
rosnick.reid@epa.gov

Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:33 AM
To: Thornton, Marisa
Subject: Fw: White Mesa Mill and Subpart W

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:17 AM
To: Collections.SubW
Subject: FW: White Mesa Mill and Subpart W

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
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202-564-1272 (ph)
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stahle.susan@epa.gov

From: Stahle, Susan
Sent: Monday, December 15, 2014 12:59 PM
To: Moffa, Anthony
Subject: RE: White Mesa Mill and Subpart W

Sure, call anytime.

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-1272 (ph)
202-564-5603 (fax)
stahle.susan@epa.gov

From: Moffa, Anthony
Sent: Monday, December 15, 2014 12:54 PM
To: Stahle, Susan
Subject: White Mesa Mill and Subpart W

Sue,

Do you have a few minutes for a quick conversation on the UMU tribe issue today? I am in the process of drafting a response to the tribe.

-Anthony

Anthony Moffa

Cross-Cutting Issues Law Office

Civil Rights and Finance Law Office

Office of General Counsel

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Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:32 AM
To: Thornton, Marisa
Subject: Fw: White Mesa Mill and Subpart W

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:17 AM
To: Collections.SubW
Subject: FW: White Mesa Mill and Subpart W

Susan Stahle
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stahle.susan@epa.gov

From: Moffa, Anthony
Sent: Monday, December 15, 2014 12:54 PM
To: Stahle, Susan
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Sue,

Do you have a few minutes for a quick conversation on the UMU tribe issue today? I am in the process of drafting a response to the tribe.

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Anthony Moffa
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Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:32 AM
To: Thornton, Marisa
Subject: Fw: Tomorrow's conference Call

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:21 AM
To: Collections.SubW
Subject: FW: Tomorrow's conference Call

Susan Stahle
Attorney-Advisor
Air and Radiation Law Office
Office of General Counsel
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stahle.susan@epa.gov

From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 11:20 AM
To: Moffa, Anthony
Cc: Peake, Tom; Childers, Pat; Stahle, Susan; Diaz, Angelique
Subject: Tomorrow's conference Call

Hi Anthony,

Do you have a call-in number yet? Thanks

Reid

Reid J. Rosnick
US Environmental Protection Agency
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202.343.9563
rosnick.reid@epa.gov

Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:32 AM
To: Thornton, Marisa
Subject: Fw: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:21 AM
To: Collections.SubW
Subject: FW: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

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Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

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Sent: Wednesday, December 03, 2014 6:25 AM
To: Moffa, Anthony
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Subject: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

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Thornton, Marisa

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Sent: Friday, January 23, 2015 11:32 AM
To: Thornton, Marisa
Subject: Fw: Conference Call Tomorrow

From: Stahle, Susan
Sent: Tuesday, January 13, 2015 10:22 AM
To: Collections.SubW
Subject: FW: Conference Call Tomorrow

Susan Stahle
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From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 10:24 AM
To: Stahle, Susan
Subject: Conference Call Tomorrow

Hi Sue,

Just a heads-up that I won't be on the call with Anthony Moffa tomorrow, but Tom, Dan and Pat Childers from HQ will. Additionally, Angelique Diaz will be on the call, so I think we're well represented. Tomorrow I have to have an ultrasound of my liver, apparently all the drugs I take are doing a number on it.

Who is Anthony? I assume a special asst. to the General Counsel.

Reid

Reid J. Rosnick
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Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:31 AM
To: Thornton, Marisa
Subject: Fw: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

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Sent: Tuesday, January 13, 2015 10:22 AM
To: Collections.SubW
Subject: FW: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

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To: Collections.SubW
Subject: FW: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

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stahle.susan@epa.gov

From: Laumann, Sara
Sent: Tuesday, December 02, 2014 3:58 PM
To: Moffa, Anthony
Cc: Stahle, Susan; Rosnick, Reid; Ward, W. Robert; Logan, Paul; Jackson, Scott
Subject: RE: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

Hi Anthony

Thanks for the background information and the invite to the call. Happy to provide what information I can.....I was involved very peripherally in the Subpart W rulemaking consultations with Ute Mountain Ute, and did not participate in the actual consultation call so not sure how much I can assist here. The suggested time for tomorrow's call doesn't work for me as I'll be out of the office tomorrow morning, and if you decide I should be included, feel free to check my calendar and pick a time that will work.

Thanks,
-Sara

-----Original Appointment-----

From: Moffa, Anthony
Sent: Tuesday, December 02, 2014 1:23 PM
To: Stahle, Susan; Rosnick, Reid

Cc: Jackson, Scott; Logan, Paul; Ward, W. Robert; Laumann, Sara

Subject: Conference Call RE: Background on Engagement with Ute Mountain Ute Tribe for General Counsel Briefing

When: Thursday, December 04, 2014 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Phone

All,

As you may know, yesterday we held our first Tribal Attorney Listening Session here at OGC. During that meeting, Celene Hawkins, Assistant General Counsel for the Ute Mountain Ute Tribe, raised some issues regarding EPA's engagement with the tribe during the NESHAP Subpart W rulemaking and foreshadowed similar issues in the upcoming rulemaking under 40 CFR 192 ("Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings"). Avi indicated that he would look into her concerns and get back to her, which is why I am writing to you.

I understand that you all have been involved with this rulemaking and engagement with the tribe in one way or another. It would be helpful to convene a short conference call with some or all of you, so that I can get the background on this issue from different perspectives and report back to Avi (I have a fairly solid understanding of the facts of the situation, but was not immersed in it in real time). I selected the time for this call that appeared to be most clear. That said, there is no need for all of you to participate. It is important that at least one representative from Region 8 be on the call, but beyond that, I will leave it up to your discretion.

Please let me know if you would like to join at the proposed time, and I will provide you with call-in information if we have a critical mass. If you feel it is important that you participate, but the proposed time does not work, please just propose an alternate time.

Thank you in advance for your help with this.

Regards,

Anthony Moffa

Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:31 AM
To: Thornton, Marisa
Subject: Fw: Ute Mountain Issue

From: Stahle, Susan
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To: Collections.SubW
Subject: FW: Ute Mountain Issue

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stahle.susan@epa.gov

From: Stahle, Susan
Sent: Tuesday, December 02, 2014 10:04 AM
To: Moffa, Anthony
Subject: RE: Ute Mountain Issue

Sure, I'd be happy to talk anytime, either in person or via phone. Let me know when you are available. Thanks.

Susan Stahle
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Sent: Monday, December 01, 2014 6:22 PM
To: Stahle, Susan
Subject: Ute Mountain Issue

Hi Susan,

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-Anthony

Anthony Moffa

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UTE MOUNTAIN UTE TRIBE'S INITIAL QUESTIONS
Environmental Protection Agency, Revisions to National Emission Standards for Radon
Emissions from Operating Mill Tailings, Proposed Rule
40 C.F.R. Part 61

Submitted on June 13, 2014 in preparation for government-to-government consultation,
July 10, 2014

I. EPA, INDIAN TRIBES, AND EXECUTIVE ORDER 13175

1. The Environmental Protection Agency's (EPA) statement regarding compliance with Executive Order 13175 states that the Subpart W rulemaking action does not have "tribal implications" because the rulemaking does not impose regulatory requirements on tribal governments. Please be prepared to discuss how the following issues impact the EPA's Executive Order 13175 analysis:

- Although Native Americans make up only 1.4 percent of Utah's racial profile (and 0.9 percent of the United States' racial profile), they make up 55.8 percent of the racial profile for San Juan County, Utah (the county where the White Mesa Mill (WMM) is located).
- The WMM facility is located on aboriginal lands of the Ute Mountain Ute Tribe.
- The WMM facility is located adjacent to land and other Indian Trust Assets held in trust by the United States on behalf of the Ute Mountain Ute Tribe (and less than 3 miles from the nearest Tribal resident).
- The Tribal community located in White Mesa is downgradient of the WMM facility.
- The Tribal community located in White Mesa is completely dependent on groundwater supplies located underneath the WMM facility and tailings cells.
- Activities and operations at the WMM have already impacted Tribal members' abilities to use surface, plant, wildlife, and surface water resources on public and Tribal lands.

RESPONSE: We are sensitive to the unique situation of the Tribe. As such, we have been in contact since May 2010 when EPA visited the Tribe in White Mesa. We gave a presentation where we gave our outline of the process of revising the Subpart W rule. We have a dedicated website that list many documents that have been used to revise the rule. We hold quarterly stakeholder conference calls to gather information and questions that focus our thinking. Additionally, this consultation also helps us gather information in order to craft a better rule.

The Executive Order specifies that each Agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. The EPA Policy on Consultation and Coordination with Indian tribes is spelled out in our policy dated May 4, 2011(<http://www.epa.gov/indian/pdf/cons-and-coord-with-indian-tribes-policy.pdf>)

The original analysis statement that "the rulemaking does not impose regulatory requirements on tribal governments reflects that the rulemaking is not placing additional economic burden on the tribe. However recognizing the information that you have provided us concerning the unique

situation of the tribe, we are honoring your request for consultation.

2. Please be prepared to discuss how the EPA will address Tribal concerns during this Subpart W rulemaking and related rulemaking processes (including, but not limited to, the anticipated revision to 40 C.F.R. Part 192).

RESPONSE: We welcome all comments from the Tribe, and as with this consultation, will be prepared to address any and all comments made by the Tribe. Consultation at EPA consists of four phases: Identification, Notification, Input, and Follow-up: We are currently receiving your input through this consultation and any formal comments you submit as part of the Subpart W rulemaking process. As part of the Follow-up phase, EPA will provide feedback to all tribes involved in the consultation to explain how their input was considered in the final action.

3. Please be prepared to discuss how or whether the EPA undertook analysis of how this rulemaking will impact UMU Tribal members, UMU Tribal lands, and Indian Trust Assets.

RESPONSE: We project that the proposed requirements will maintain or improve air quality surrounding the facility. The GACT standards being proposed are based on control technologies and management practices that have been used at uranium recovery facilities for the past twenty or more years. These standards will minimize the amount of radon that is released to the air by keeping the impoundments wet or covered with soil and/or by limiting the area of exposed tailings. The requirements in this proposed rule should eliminate or reduce radon emissions at all three types of affected sources.

II. NESHAPS/CLEAN AIR ACT QUESTIONS

4. Has the EPA evaluated establishing a lesser quantity or different criteria for major sources of radionuclides under Section 112(a)(1) of the CAA? *See* footnote 2, page 25390 of the proposed rulemaking (noting that *none* of the uranium recovery facilities are major sources under NESHAPS).

RESPONSE: We have not evaluated establishing a lesser quantity or different criteria for major sources of radionuclides under Section 112(a)(1) of the CAA. Sect 112 notes definitions for major sources and area sources of HAP. There is no different definition for major source of radionuclide HAP, and radon analysis shows uranium recovery facilities to fit under the area source definition.

5. On page 25390 of the proposed rulemaking, the EPA identifies the “source category” for Subpart W using 40 C.F.R. § 61.250 and the proposed definition of “uranium recovery facility.” Has the EPA listed uranium recovery facilities as a category or subcategory of sources under Section 112(c) of the Clean Air Act? If so, please provide an explanation and documentation in advance of the consultation meeting.

RESPONSE: As defined by EPA pursuant to the CAA, the source category for Subpart W is “facilities licensed [by the U.S. Nuclear Regulatory Commission (NRC)] to manage uranium byproduct material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.” 40 CFR 61.250. Subpart W defines “uranium

byproduct material or tailings” as “the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content.” 40 CFR 61.251(g). For clarity, in this proposed rule we refer to this source category by the term “uranium recovery facilities” and we are proposing to add this phrase to the definitions section of the rule. Use of this term encompasses the existing universe of facilities whose HAP emissions are currently regulated under Subpart W. Uranium recovery facilities process uranium ore to extract uranium.

6. On page 25390 of the proposed rulemaking, the EPA states, “Subpart W requirements specifically apply to the affected sources at the uranium recovery facilities that are used to manage or contain the uranium byproduct material or tailings.” However, the proposed Subpart W rulemaking only covers some HAP sources at uranium recovery facilities, and not others (such as stackhouses, ore pad, ore grinder, and the Mill yard, see Question 7, *infra*). Please explain the EPA’s rationale for excluding such HAP sources at conventional uranium mills.

RESPONSE: As we stated in the preamble to the proposed rule, we had no data or information that showed that HAPs were being emitted in other areas of the facility(s). You have presented information to us, currently under review, that shows there may be other areas of the facility(s) that contain HAP.

7. On page 25390 of the proposed rulemaking, the EPA states: “We presently have no data or information that shows any other HAPs being emitted from these impoundments.” Please provide a response to the following initial questions, data, and information regarding other HAPs that may be emitted from the WMM.
 - The WMM’s 10 C.F.R. § 40.65 environmental airborne particulate monitoring program monitors for natural uranium (Uranium-238, Uranium-234, Uranium-235), Thorium-230, Radium-226, and Lead-210. This air monitoring program has detected all four isotopes at all of the air monitoring stations. Additionally, the WMM has identified Lead-210, Thorium-230, Thorium-232, Polonium-210, Radium-226, and Radium-228 in wastewater samples from the tailings impoundments. This indicates that sources at the WMM (including the tailings impoundments, stackhouses, ore pad, ore grinder, and the Mill yard) are emitting radionuclides other than Radon-222.
 - The WMM processes uranium ore. During the uranium storage and milling processes, there may be more than three dozen radioactive isotopes present at the WMM facility (including actinium, astatine, bismuth, francium, lead, polonium, protactinium, radium, radon, thallium, thorium, and uranium). *See* Uranium Decay Series diagram on page 44 of the Technical and Regulatory Support document. This indicates that sources at the WMM (including the tailings impoundments, stackhouses, ore pad, ore grinder, and the Mill yard) are emitting radionuclides other than Radon-222.
 - The WMM’s uranium milling process uses significant quantities of chemicals (sodium chlorate is used during ore oxidation; sulfuric acid and flocculants are used during the leaching and clarification; secondary amines/kerosene, tri-alkyl amines/tributyl phosphate modifier, and quaternary ammonium

compounds/alcohol are used during the solvent extraction; chlorides and sulfates are used during pregnant liquor stripping; and ammonia hydroxide and sodium hydroxide during yellowcake precipitation). During the storage and use of these chemicals, and after these chemicals are disposed in the tailings impoundments, there may be significant emissions of HAPs at the WMM.

- The WMM processes alternate feed materials. During the alternate feed storage and milling processes, other radioactive isotopes, non-metal compounds, and other regulated HAPs may be emitted from the WMM.
- The WMM processes vanadium ore. Vanadium is considered to be dangerous to life and health by both the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health, and may be listed as a HAP in the future. The WMM's vanadium recovery process uses a significant quantity of chemicals (sodium chlorate is used during the redox/pH adjustment; kerosene and secondary amines are used during the solvent extraction; soda ash is used during the vanadium pregnant liquor stripping process; and ammonia hydroxide is used during the vanadium precipitation). This indicates that the vanadium recovery process results in the emission of HAPs other than Radon-222 from the WMM facility.

RESPONSE: We appreciate the discussion we had with you on June 25, in preparation for this call. On July 3 you sent detailed supplemental information on semiannual effluent reports, a summary of the milling process and reagents used, and a tailings wastewater sampling report. We are now in the process of reviewing these documents.

8. On page 25390 of the proposed rulemaking, the EPA states that it evaluated the MACT standards applicable to major sources in the same industrial sector. Please provide the Tribe with this analysis prior to the consultation, and be prepared to explain the MACT analysis that the EPA performed during this rulemaking process.

RESPONSE: Section 112(d) of the CAA requires EPA to establish emission standards for major and area source categories that are listed for regulation under CAA section 112(c). A major source is any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any single hazardous air pollutant (HAP) or 25 tpy or more of any combination of HAP. An area source is a stationary source of HAP that is not a major source. For the purposes of Subpart W, the HAP at issue is radon. We presently have no data or information that shows any other HAPs being emitted from these impoundments. Calculations of radon emissions from operating uranium recovery facilities have shown that facilities regulated under Subpart W are area sources.

Section 112(q)(1) does not dictate how EPA must conduct its review of those NESHAPs issued prior to 1990. Rather, it provides that the Agency must review, and if appropriate, revise the standards to comply with the requirements of section 112(d). Determining what revisions, if any, are appropriate for these NESHAPs is best assessed through a case-by-case consideration of each NESHAP. In this case, we have reviewed Subpart W and are revising the standards consistent with section 112(d)(5), which provides EPA authority to issue standards for area sources.

Under CAA section 112(d)(5), the Administrator may elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or

management practices by such sources to reduce emissions of hazardous air pollutants.” Under section 112(d)(5), the Administrator has the discretion to use generally available control technology or management practices (GACT) in lieu of maximum achievable control technology (MACT) under section 112(d)(2) and (d)(3), which is required for major sources. Pursuant to section 112(d)(5), we are proposing revisions to Subpart W to reflect GACT.

9. Please explain how the EPA evaluated the use of a work practice standard, rather than an emissions standard, for the control of a HAP under the proposed rulemaking. *See* Section 112(h), Clean Air Act. Please specifically address the EPA’s determination to remove the current emissions standard for existing impoundments. Please also explain how removing the emissions standard from Subpart W will affect: (a) how the WMM facility sets and meets the ALARA goal to protect worker and adjacent communities from radionuclides; and (b) monitoring of radon emissions under 10 C.F.R. Part 40, Appendix A.

RESPONSE: For this proposal we solicited information on the available controls and management practices for this area source category using written facility surveys (surveys authorized by section 114(a) of the CAA), reviews of published literature, and reviews of existing facilities (EPA-HQ-OAR-0218-0066). We also held discussions with trade association and industry representatives and other stakeholders at various public meetings. Our determination of GACT is based on this information. We also considered costs and economic impacts in determining GACT.

We identified two general management practices that reduce radon emissions from affected sources. These general management practices are currently being used at all existing uranium recovery facilities. First, limiting the area of exposed tailings in conventional impoundments limits the amount of radon that can be emitted. The work practice standards currently included in Subpart W require owners and operators of affected sources to implement this management practice by either limiting the number and area of existing, operating impoundments or covering dewatered tailings to allow for no more than 10 acres of exposed tailings. This is an existing requirement of Subpart W and of the NRC licensing requirements; hence, owners and operators of uranium recovery facilities are already incurring the costs associated with limiting the area of conventional impoundments (and as proposed, heap leach piles) to 40 acres or less (as well as no more than two conventional impoundments (and as proposed, heap leach piles) to 40 acres or less (as well as no more than two conventional impoundments in operation at any one time), or limiting the area of exposed tailings to no more than 10 acres.

Second, a liquid cover is a general management practice that is an effective method for limiting radon emissions. This general management practice is often used at conventional impoundments and is true for nonconventional impoundments, which, as stated earlier, are also known as evaporation or holding ponds. These nonconventional impoundments contain liquid byproduct material, and thus their radon emissions are regulated under Subpart W. They are also regulated under the NRC operating license. While they hold mostly liquids, they must still be designed and constructed in the manner of conventional impoundments, meaning they meet the requirements of section 192.32(a)(1). While this management practice of covering uranium byproduct materials in impoundments with liquids is not currently required under Subpart W, facilities using this practice have generally shown its effectiveness in reducing emissions. We are therefore proposing to require the use of liquids in nonconventional impoundments as a way to limit radon emissions.

III. SUBPART W AND CLOSURE OF LEGACY IMPOUNDMENTS

10. In 1989, when the EPA proposed the current Subpart W NESHAP, the EPA concluded that, “Existing mill tailing piles are large piles of waste that emit radon. There is nothing that can be done to reduce the amount of radon they emit except cover them.” 54 FR 9644 (March 7, 1989). EPA crafted Subpart W to prohibit uranium mills from having more than two tailings impoundments in operation. Explain why the EPA has not required closure of the legacy Tailings Cells 1, 2, and 3 at the WMM, as contemplated and required by the current NESHAP.

RESPONSE: We will defer on this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill.

11. In this proposed rulemaking, the EPA acknowledges that there is a linear relationship between the area of a tailings impoundment and Radon-222 emissions (which justifies the size restrictions on conventional impoundments). *See* page 25393 of the proposed rulemaking. Explain how the EPA can justify the long-term risk of having almost 300 acres of tailings impoundments that are either in operation or in closure but without a permanent radon barrier at the WMM. *See also* questions on conventional and non-conventional impoundments.

RESPONSE: We will defer on this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill.

IV. DEFICIENT OR INCORRECT ANALYSIS OF OPERATIONS AND FACILITIES AT THE WMM

12. The owners of the WMM state in the June 1, 2009 letter response to EPA’s CAA Section 114 Information Request that Tailings Cells 1, 2, and 3 meet the requirements of 40 C.F.R. 192.32(a). The WMM owners specify that these specific Tailings Cells meet the design and operating requirements under 40 C.F.R. 264.221(a). Please explain how the EPA evaluated the WMM owners’ assertions regarding compliance with 40 C.F.R. 192.32(a) and 40 C.F.R. 264.221(a), given the following:
- The liners in Tailings Cells 1, 2, and 3 were designed for a 15-year life and were installed between May 1980 and September 1982. These impoundments have already been in operation for over 30 years.
 - Contamination of the shallow groundwater underlying Tailings Cells 1, 2, and 3 has been documented and is the subject of investigation and corrective action to address elevated chloroform, nitrate and chlorides. There is

significant evidence that the liners on Tailings Cells 1, 2, and 3 have already allowed migration of waste out of the impoundments into the adjacent groundwater.

- The Agreement State and the WMM owners treat the shallow groundwater aquifer under the WMM facility as the leak detection system for Tailings Cells 1, 2, and 3 (and developed a groundwater monitoring program that can detect tailings cell leakage only after waste has migrated out of these legacy impoundments).
- The single, 30-mil PVC liners in Tailings Cells 1, 2, and 3 do not have appropriate chemical properties and sufficient strength and thickness to prevent failure due to conditions outlined in 40 C.F.R. § 264.221(a)(1).
- The single, 30-mil PVC liners in Tailings Cells 1, 2, and 3 are not compatible with alternate feed materials contained in the impoundments.

RESPONSE: We will defer the details of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. We can reiterate our statements from our last discussion on June 26; The Subpart W rule as it exists today does not allow operation of impoundments that do not meet the liner standards found at 40 CFR 192.32(a). Impoundments that do not meet these standards must be closed. We can give details on our information collection process. We collected information on existing uranium mills and in-situ leach facilities by issuing information collection requests authorized under section 114(a) of the CAA to seven uranium recovery facilities. At the time, this represented 100% of existing facilities. Since then, Cotter Corp. has closed its Cañon City facility. These requests required uranium recovery companies to provide detailed information about the uranium mill and/or in-situ leaching facility, as well as the number, sizes and types of affected sources (tailings impoundments, evaporation ponds and collection ponds) that now or in the past held uranium byproduct material. We requested information on the history of operation since 1975, ownership changes, whether the operation was in standby mode and whether plans existed for new facilities or reactivated operations were expected.¹ We also reviewed the regulatory history of Subpart W and the radon measurement methods used to determine compliance with the existing standards.

13. Several important sections of the proposed rulemaking rely on the provisions of 40 C.F.R. § 264.221(c) (and not 40 C.F.R. § 264.221(a)) to explain protection of groundwater or other environmental analysis. *See, e.g.*, page 25393 (setting forth specific liner requirements from 40 C.F.R. § 264.221(c)); page 25397 (specifically relying on safeguards from a leak detection system); page 25401 (specifying that the proposed GACT is for double liners on non-conventional impoundments). The provisions of 40 C.F.R. § 264.221(c) are significantly more protective of groundwater, human health, and the environment.

- Is the EPA taking the position that all conventional impoundments and non-conventional impoundments must meet the requirements of 40 C.F.R. §

264.221(c)? If so, please clarify the EPA's position on whether Tailings Cells 1, 2, and 3 at the WMM meet the requirements of 40 C.F.R. § 264.221(c).

- If the EPA is not taking the position that 40 C.F.R § 264.221(c) applies to all conventional and non-conventional impoundments, please explain how the EPA addressed risks to groundwater from legacy impoundments like Tailings Cells 1, 2, and 3. Please specifically address how the EPA assessed the risk of groundwater contamination from Tailings Cell 1. *See* question 12, *supra*.

RESPONSE: We will defer on this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. We can reiterate our statements from our last discussion on June 26; The Subpart W rule as it exists today does not allow operation of impoundments that do not meet the liner standards found at 40 CFR 192.32(a). Impoundments that do not meet these standards must be closed.

14. Please explain how (or if) the EPA's specific analysis of the WMM facility addressed the following:

- Cell 2 is currently licensed to receive 11(e)(2) byproduct material (liquids and solids).
- Method 115 monitoring on Cell 2 detected a Subpart W NESHAPS violation in 2012/2013 over the 20 pCi/m²-s limit.
- Cell 3 is currently licensed to receive 11(e)(2) byproduct material (liquids and solids).
- Cell 3 is currently the only tailings cell at the WMM that receives certain forms of 11(e)(2) byproduct material (materials trucked in, including ISL waste).
- The WMM facility has not historically operated its "conventional" and "non-conventional" tailings impoundments separately. Tailings Cell 4A was operated as a "non-conventional" impoundment, which resulted in surface and groundwater contamination until the cell was retrofitted starting in 2008. Tailings Cell 4B is currently operated as a "non-conventional" impoundment, but the WMM owners indicate that it will be used as a "conventional" impoundment in the future.
- Under currently approved and proposed reclamation plans for the WMM, the permanent radon barriers will not be placed on *any* tailings impoundments until final reclamation at the facility.

RESPONSE: We will defer on this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. We can reiterate our statements from our last discussion on June 26; The Subpart W rule as it exists today does not allow operation of impoundments that do not meet the liner standards found at 40 CFR 192.32(a). Impoundments that do not meet these standards must be closed.

V. NON-CONVENTIONAL IMPOUNDMENTS

15. How did the EPA develop the proposed definition of “non-conventional impoundments”?

RESPONSE: Common names for these structures may include, but are not limited to, impoundments and evaporation or holding ponds. These affected sources may be found at any of the three types of uranium recovery facilities.

Evaporation or holding ponds, while sometimes smaller in area than conventional impoundments, perform a basic task. They hold liquid uranium byproduct material until it can be disposed.

They are not intended to be permanent in nature. When uranium recovery facilities close, these units are removed, and most times the liners and any associated sludges found in the impoundment, are disposed of in conventional impoundments. Classic non-conventional impoundments are specifically found at ISL facilities. These facilities do not generate “tailings” in the volume that need to be disposed at a conventional mill. However, non-conventional impoundments could be found at conventional mills, ISL facilities and heap leach piles.

16. Please explain how the EPA will distinguish between conventional and non-conventional impoundments.

- a. Is there a minimum amount of liquid that must be present in the pond for the EPA to classify a tailings impoundment as a non-conventional impoundment, or can a facility owner convert a conventional impoundment into a non-conventional impoundment by adding the minimum 1m of liquid on the top of the impoundment?
- b. Will the final reclamation or removal plan for a tailings impoundment determine whether it qualifies as a “non-conventional impoundment”?
 - o Please explain how the EPA will treat Tailings Cell 1 at the WMM (noting that the WMM owners plan to remove solids from the cell upon final reclamation, but then permanently dispose of debris from the Mill facilities and contaminated soil in the cell). *See* June 1, 2009 Response Letter at 6; page 25405 of the proposed rulemaking (addressing the disposal of byproduct material like deconstruction material during facility reclamation).
 - o Please explain how the EPA will treat Tailings Cell 4B at the WMM (which the WMM owner is currently operating as a non-conventional impoundment, but which will become a conventional impoundment before final reclamation).

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. However, generically, non-conventional impoundments, also known as

evaporation or holding ponds, perform a basic task. They hold predominantly liquid uranium byproduct material until it can be disposed.

They are not intended to be permanent in nature. When uranium recovery facilities close, these units are removed, and most times the liners and any associated sludges found in the impoundment, are disposed of in conventional impoundments.

Conventional impoundments, on the other hand, are depending on the GACT standard used, up to 40 acres in size, and contain tailings generated by a conventional uranium mill. These impoundments are permanent, and must be closed in place when full. It is possible for an impoundment to begin as a non-conventional impoundment and then be converted to a conventional impoundment. This type of switch in impoundment status would need to be approved by NESHAP Subpart A, as a modification to an existing unit.

17. The WMM is currently authorized to temporarily place liquid 11(e)(2) byproduct material in “Roberts Pond” (before pumping the liquid into Tailings Cells 1 and 4B). Does Roberts Pond meet the proposed definition of a “non-conventional impoundment”? See pages 25390, 25393 of the proposed rulemaking (addressing “holding” and “collection” ponds). Please explain how EPA has assessed the Radon-222 emissions from Roberts Pond and from the regular transfer of process water from Roberts Pond to Tailings Cells 1 and 4B.

RESPONSE: Thank you for the supplemental information you supplied regarding this question. As we stated on the last conference call, EPA does not have the information to make that determination or to discuss this at the consultation. We are reviewing the information you submitted. To reiterate, impoundments at uranium recovery facilities that contain byproduct material must conform to the Subpart W standards.

NUMBER 17 ADDENDUM

- (a) Under the existing subpart W rule, ponds that receive 11(e)(2) byproduct material are regulated by Subpart W, and must conform to the design requirements. The same is true in the proposed rule.
- (b) Your second question involves radon emissions from ponds that transfer liquid byproduct material into other ponds. We did look at the process. The waste water contains significant amounts of radium, which will radiologically decay and generate radon gas. Radon diffuses much more slowly in water than it does in air. For example, the radon diffusion coefficient in water is about 10,000 times smaller than the coefficient in air (i.e., on the order of 10^{-5} square centimeters per second (cm^2/sec) for water and 10^{-1} cm^2/sec for air (Drago 1998, as reported in Brown 2010)). Thus, if the tailings piles are covered with water, then most of the radon would decay before it could diffuse its way through the water. However, since over time periods comparable to the half-life of radon, there is considerable water movement within a pond, advective as well as diffusive transport of radon from the pond water to the atmosphere must be considered. The water movement is partly caused by surface wind currents, thermal gradients, mechanical disturbance from the mill discharge pipe, and biological disturbances (animals, birds, etc.). Dye movement tests indicate that for shallow (less than 1 meter) pond water, advective velocities may exceed 1–2 millimeters per minute,

resulting in virtually no radon containment by the surface water. If shallow water movement is sufficient to remove radon from the tailings-water interface and transport it to the atmosphere in a short time (several hours), the radon flux from the shallow tailings is nearly as great as that from similar bare saturated tailings; hence, no significant radon attenuation is gained by covering the tailings with water (Nielson and Rogers 1986). Consequently, in order for a pond covering a tailings pile to be effective at reducing the release of radon, the pond water must be greater than 1 meter in depth. You can find this discussion and more in our Background Information Document (p.36)

18. Please explain the EPA's rationale for allowing non-conventional impoundments to exist until removal at facility closure.

- Did the EPA analyze whether allowing water-covered impoundments to exist for the life of a facility increases risks of groundwater and surface water contamination? Please see question 12 (and explain EPA's position on the 15-year design life for Tailings Cell 1 at the WMM).
- How will the EPA ensure that non-conventional impoundments are periodically retrofitted to ensure that the impoundments do not contaminate groundwater and surface water?

RESPONSE: EPA's design standards for impoundments consist of a double liner system with a leak detection system between the liners. If an impoundment should begin to leak, the detection system is designed to alert the owner/operator of the leak before it leaks through the second liner and potentially contaminates ground water. As another safety feature, the ground-water detection monitoring system required in 40 CFR 192.32 (by the NRC or an Agreement State through licensing) will alert an owner/operator of leakage from an impoundment.

19. EPA acknowledges that there is a linear relationship between the area of a tailings impoundment and Radon-222 emissions (which justifies the size restrictions on conventional impoundments). See page 25393 of the proposed rulemaking. Please explain why this linear relationship does not also justify size restrictions on non-conventional impoundments (and please specifically address how this linear relationship will impact Radon-222 emissions when large non-conventional impoundments are dewatered and closed).

RESPONSE: The linear relationship, as the Tribe has pointed out, refers specifically to large areas of uncovered tailings, and not to liquid byproduct material found in non-conventional tailings. This is why a size restriction was placed on conventional impoundments, so as to limit the amount of radon that can be emitted from drying, exposed tailings. The reason we proposed not to limit sizes of non-conventional tailings is because liquid covered material does not emit radon in the same fashion as partially dried out tailings.

20. How has the EPA analyzed what risks non-conventional impoundments (including large non-conventional impoundments like Tailings Cell 1 at the WMM) will pose to human health and the environment when they are de-watered and decommissioned?

RESPONSE: We believe that the dewatering of a non-conventional impoundment will not take a long time. In fact, we believe that in the arid southwest, it may be more difficult to maintain the liquid in the impoundment. Once the impoundment and any sludges are dried out, we expect the removal of the sludges and the impoundment to take less than a year. Remember that once the impoundment begins closure it falls under the requirements of 40 CFR 192.32 and under the authority of the NRC or Agreement State.

21. How will the proposed rule address tailings impoundments that are used as conventional and non-conventional impoundments (such as Tailings Cells 4A and 4B at the WMM)? How will the EPA “count” these cells using the 2-cell limit in the conventional impoundment work practice standard?

RESPONSE: Impoundments are counted according to the type of byproduct they contain. If an impoundment contains solid “tailings” from a conventional milling process then it is a conventional impoundment and falls under the proposed GACT standards which limit size and number. The determinations are made during EPA’s review of the facility application to construct or application to modify found at NESHAP Subpart A.

22. The EPA’s analysis that using liquids to cover tailings cells “has been sufficient to limit the amount of radon emitted from the ponds, in many cases, to almost zero” is insufficient to demonstrate that Tailings Cell 1 at the WMM has a radon flux of “almost zero” (or even under 20 pCi/m²-s).

Based on the information and questions below, please provide the EPA’s specific analysis of the calculated radon emissions from Tailings Cell 1, Tailings Cell 4B, and Roberts Pond at the WMM. Please then explain how EPA calculates the dose to the White Mesa Tribal community (considering radon emissions from Tailings Cell 1 and 4B and Roberts Pond, along with radon emissions from “conventional” impoundments 2, 3, and 4A).

- a. The proposed rulemaking recognizes that covering tailings impoundments with water does not reduce radon emissions to zero. *See, e.g.*, Radon Emission from Evaporation Ponds (noting that the radon flux above some evaporation ponds can be significant/exceed 20 pCi/m²-s).
- b. The proposed rulemaking contemplates the use of radium-laden “process water” to provide liquid covers on non-conventional impoundments, but does not address whether the use of radium-laden process water increases the radon emissions from a non-conventional impoundment. The EPA analysis justifying the use of the 1 meter water cover relies on the assumption that the water cover is not laden with radium. The EPA analysis also calculates significant radon flux from non-conventional impoundments containing radium-laden water. Please justify the EPA’s position that 1 m of radium-laden process water can decrease radon flux from tailings impoundments like Tailings Cell 1 at WMM to zero.
- c. The EPA’s analysis of radon emissions from liquid-covered impoundments recognizes that there are significant radon emissions during the transfer of radium-laden waters to and between tailings impoundments and during enhanced evaporation sprays, but it does not calculate or address these emissions for conventional mills like the WMM.

- d. Using the radon flux equation contained in Section 4.0 of the Radon Emissions from Evaporation Ponds report along with the actual radium content¹ in Tailings Cell 1, the Tribe's initial calculation on the radon flux from Tailings Cell 1 is 327 pCi/m²-s (not including emissions during transfer into Cell 1 or during enhanced evaporation sprays).

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. Thank you for the supplemental information you supplied regarding this question. As we stated on the last conference call, EPA did not have the information to make a determination or to discuss this at the consultation. We are reviewing the information you submitted.

VI. CONVENTIONAL IMPOUNDMENTS

23. The Tribe is generally confused about the EPA's approach to Tailings Cells 2 and 3 at the WMM. The EPA seems to recognize that neither of these tailings cells meets the work practice standards proposed in this rulemaking. *See* page 25395 of the proposed rulemaking (noting that Cell 3 could not meet the work practice standards). Given that both tailings impoundments are still licensed by the Agreement State to receive liquid and solid 11(e)(2) byproduct material and that neither tailings impoundment has a tailings closure plan with milestones for placement of a permanent radon barrier, please explain how the EPA can continue to justify removing the monitoring requirements and emissions limits that currently apply to these impoundments.

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. Regarding removal of the monitoring requirements, EPA recognized that it is difficult to prescribe emissions standards for radon emissions from tailings piles. Radon is emitted from the surfaces of tailings piles in a manner analogous to fugitive dust emissions and is not emitted through a conveyance designed and constructed to capture such emissions. We believe that requiring the GACT standards gives us a more reliable way of controlling radon emissions.

¹ To determine the actual radium content, the Tribe used the 32,700 pCi/L Gross Radium Alpha concentration provided in the in the 2013 Annual Tailings Report.

24. The Tribe is concerned that, although Tailings Cell 2 had a recent violation of the 20 pCi/m²-s emissions limit that applies to existing impoundments (and although that violation was detected during monitoring conducted under Method 115), the EPA did not consider Cell 2 when considering how the proposed rulemaking would impact the WMM. Please explain why the EPA omitted any analysis of Cell 2 and the recent Subpart W

violation at Cell 2. Please also explain how the EPA will ensure that emissions from Tailings Cell 2 do not exceed 20 pCi/m²-s between now and when the final radon barrier is placed during final reclamation of the entire facility (given that the EPA is proposing to eliminate both the emissions limit and the monitoring to detect Radon-222 emissions over 20 pCi/m²-s).

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. However, we omitted any analysis of Cell 2 because we have been told that it is no longer in operation, and therefore not subject to Subpart W.

25. The proposed rulemaking references the use of an “interim cover” on Tailings Cells 2 and 3 at the WMM. The Tribe is concerned that the WMM owners have used this “interim cover” on Tailings Cell 2 for more than a decade (and that the use of this cover has already resulted in Radon-222 emissions of over the 20 pCi/m²-s limit) and that the Reclamation Plan for the WMM contemplates the use of such “interim covers” until final reclamation at the facility. Please explain whether and how the EPA justifies the use of interim covers (and not the immediate placement of permanent radon barriers).

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill.

VII. APPLICABILITY OF 40 C.F.R. PART 192

26. A significant portion of the EPA’s analysis in the proposed rulemaking (including analysis on impacts to the environment and human health, analysis on weather and other hazards, and economic analysis) rests on the assumption that all tailings impoundments (conventional and non-conventional) meet the standards set forth in 40 C.F.R. § 192.32(a)(1) and 40 C.F.R. § 264.221. How will the EPA ensure that all the tailings impoundments at the WMM facility meet the applicable federal standards?

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill. However, generically speaking, applicants for impoundments must show they meet all requirements when they apply for construction or modification under NESHAP Subpart A. We are, however, taking your concern regarding compliance assessment into consideration.

27. The EPA is proposing to eliminate internal cross references to the sections of 40 C.F.R. Part 192 that cover placement of permanent radon barriers on tailings impoundments. Additionally, although the EPA identified the need to better define “closure” under Subpart W, the revisions to the terms “standby” and “operation” in the proposed rulemaking do not define or address “closure” under the revised Subpart W NESHAP regulations.

- How will the EPA determine whether a tailings impoundment has entered “final closure” for Subpart W NESHAP purposes?
- If the EPA no longer intends to utilize other portions of 40 C.F.R. Part 192 (including, but not limited to, the definitions of “Tailings Closure Plan,” “Permanent Radon Barrier,” and requirements that the permanent radon barrier be constructed as expeditiously as possible and in accordance with a tailings closure plan), how will the EPA ensure that permanent radon barriers are properly placed on tailings cells? Here, please address the Tribe’s concern that, under current reclamation plans for the WMM, the permanent radon barriers for Cells 2 and 3 will not be placed under final reclamation of the facility (and that there are no Tailings Closure Plans, as defined in 40 C.F.R. Part 192, with milestones for the expeditious placement of the permanent radon barriers).

RESPONSE: To clarify, the requirements at 40 CFR 61.252(b) and (c) require compliance with 40 CFR 192.32(a). However, we are now proposing to focus the Subpart W requirements on the impoundment design and construction requirements found specifically at 40 CFR 192.32(a)(1). The remainder of 40 CFR 192.32(a) goes beyond this limited scope by including requirements for ground-water detection monitoring systems and closure of operating impoundments. These other requirements, along with all of the part 192 standards, are implemented and enforced by the NRC through its licensing requirements for uranium recovery facilities at 10 CFR part 40, Appendix A. However, when referenced in Subpart W, the requirements in 40 CFR 192.32(a)(1) would also be implemented and enforced by EPA as the regulatory authority administering Subpart W under its CAA authority. Therefore today we are proposing to revise 40 CFR 61.252 (b) and (c) to specifically define which portions of 40 CFR 192.32(a) are applicable to Subpart W. At the same time we are proposing to eliminate the phrase “...as determined by the Nuclear Regulatory Commission” from 40 CFR 61.252(b). This should eliminate confusion regarding what an applicant must submit to EPA under the CAA in its pre-construction and modification approval applications as required by 40 CFR 61.07, and better explain that EPA is the regulatory agency administering Subpart W under the CAA. This proposed change will have no effect on the licensing requirements of the NRC or its regulatory authority under UMTRCA to implement the part 192 standards through its licenses.

As we explained in the preamble to proposal, operation means that an impoundment is being used for the continued placement of uranium byproduct material or tailings or is in standby status for such placement. 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 begins. An impoundment is in operation as long as byproduct material is being emplaced in the impoundment.

28. The Tribe is concerned that the Tribal community in White Mesa will be exposed to elevated levels of Radon-222 when the WMM facility undertakes de-watering or other closure activities or allows Tailings Cells 2 and 3 to remain open under an “interim cover.” Please explain how the EPA has specifically assessed the anticipated dose to the White Mesa Community *during* the closure period. Please also explain how the EPA will ensure that Tribal members, Tribal lands and other Indian Trust Assets are not exposed to Radon-222 emissions in excess of 20 pCi/m²-s during the closure period.

RESPONSE: We will defer on the specifics of this question at this time. It is our understanding that EPA Region 8, the State of Utah and the Ute Mountain Ute Tribe will be meeting in the near future to discuss legacy impoundments, and the enforcement issues the Tribe has raised regarding the White Mesa uranium mill.

Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:33 AM
To: Thornton, Marisa
Subject: Fw: RE: Conference Call on Engagement with Ute Mountain Ute Tribe
Attachments: NESHAPS Questions for EPA FINAL.rtf

From: Rosnick, Reid
Sent: Friday, January 9, 2015 6:26 AM
To: Collections.SubW
Subject: FW: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 11:13 AM
To: Childers, Pat
Cc: Peake, Tom
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

Pat,

Here are my final notes from the July 10 consultation. You are correct that the second consultation did not happen. We tried to schedule it in October when Janet was in Denver, but the Chairman could not make the meeting. I also think that part of the issue arose because I could not travel due to medical issues. We also told Scott Clow that we could not provide definitive answers for their radon calculations because we have received similar calculations (with a different answer!) from the uranium industry.

It's also my belief that the Tribe does not distinguish between rulemaking issues and enforcement issues that should be handled by either Utah or Region 8. We are all lumped into "EPA." My two cents.

Thanks again.

Reid

From: Childers, Pat
Sent: Wednesday, December 03, 2014 11:00 AM
To: Rosnick, Reid
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

No problem Reid,

Do you have your notes from July 10?

Also I have the letter we sent out but the follow up consultation never happened did it? My memory is clouding my Mountain Ute and Ute consultations a bit.

From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 8:02 AM
To: Childers, Pat
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

Thanks, Pat!

From: Childers, Pat
Sent: Wednesday, December 03, 2014 7:47 AM
To: Rosnick, Reid; Moffa, Anthony
Cc: Peake, Tom; Schultheisz, Daniel; Stahle, Susan
Subject: RE: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

I will be glad to participate and have put it on my calendar for tomorrow .

From: Rosnick, Reid
Sent: Wednesday, December 03, 2014 6:25 AM
To: Moffa, Anthony
Cc: Peake, Tom; Schultheisz, Daniel; Stahle, Susan; Childers, Pat
Subject: RE: Conference Call on Engagement with Ute Mountain Ute Tribe

Hello Anthony,

I am the workgroup lead for the NESHAP Subpart W rule. I will not be able to attend tomorrow's conference call regarding the UMUT. I will be out of the office until Tuesday, December 16. However, I have copied my immediate management (Tom Peake, Dan Schultheisz) and the OAR Tribal contact (Pat Childers). All can speak to ORIA's engagement with the Tribe. I will forward the invitation to them. Please let me know if I can help before the end of today. Thanks

Reid

Reid J. Rosnick
US Environmental Protection Agency
Radiation Protection Division
202.343.9563
rosnick.reid@epa.gov

Thornton, Marisa

From: Rosnick, Reid on behalf of Collections.SubW
Sent: Friday, January 23, 2015 11:33 AM
To: Thornton, Marisa
Subject: Fw: Addition to Subpart W Website

From: Rosnick, Reid
Sent: Friday, January 9, 2015 6:25 AM
To: Collections.SubW
Subject: FW: Addition to Subpart W Website

From: Rosnick, Reid
Sent: Friday, December 12, 2014 8:11 AM
To: Thornton, Marisa
Subject: RE: Addition to Subpart W Website

Looks good to me, ready to go live. Thank you, Marisa. Have a great weekend!

Reid

From: Thornton, Marisa
Sent: Friday, December 12, 2014 8:09 AM
To: Rosnick, Reid
Subject: RE: Addition to Subpart W Website

Done - <http://epastage.epa.gov/staging1/rpd/neshaps/subpartw/rulemaking-activity.html>

Let me know when you get ready to go live.

From: Rosnick, Reid
Sent: Thursday, December 11, 2014 7:36 AM
To: Thornton, Marisa
Subject: Addition to Subpart W Website

Hi Marisa,

We need to add a heading and a couple of sentences to the website
<http://www.epa.gov/radiation/neshaps/subpartw/rulemaking-activity.html>

After the section of Conference Call Information we need to add the following section:

Estimated Completion Date

EPA is now in the process of reviewing comments received during the comment period. We will then respond to comments and draft a final rule. We estimate completion date for the final rulemaking to be spring, 2016.

Additionally, do you think we need to add a link at the top of the page? I'll leave it up to you. Thanks, and please let me know if you have any questions.

Reid

Reid J. Rosnick
US Environmental Protection Agency
Radiation Protection Division
202.343.9563
rosnick.reid@epa.gov