



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

December 2, 2021

Ref: 8ENF-RO-R

SENT VIA EMAIL TO Mr. Mark Chalmers
DIGITAL READ RECEIPT REQUESTED
AND BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Mr. Mark Chalmers
President and CEO
Energy Fuels Resources (USA), Inc.
225 Union Boulevard, Suite 600
Lakewood, Colorado 80228
mchalmers@energyfuels.com

Re: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Off-Site Policy Unacceptability Notice, White Mesa Mill, Air Quality Approval Order DAQE-AN0112050018-11, Groundwater Discharge Permit No. UGW370004, Radioactive Materials License No. UT1900479

Dear Mr. Chalmers:

The purpose of this letter is to notify you that the U.S. Environmental Protection Agency (EPA) has determined that conditions exist at the Energy Fuels Resources (USA), Inc. White Mesa Mill facility which render this facility unacceptable for the receipt of off-site wastes generated as a result of removal or remedial activities under CERCLA. As further explained below, this determination of unacceptability becomes effective immediately upon your receipt of this notice confirmed by an email read receipt or certified mail receipt, whichever comes first. Once this unacceptability determination becomes effective, the facility will remain unacceptable until such time as the EPA notifies you otherwise. The implementation of this notice does not prohibit the EPA or delegated state programs from taking appropriate enforcement actions under any federal or state authority.

The CERCLA Off-Site Rule (OSR) was promulgated on September 22, 1993 (58 Fed. Reg. 49200); Title 40 Code of Federal Register (C.F.R.) § 300.440. The OSR requires that CERCLA wastes only be placed in a facility operating in compliance with all applicable Federal or State requirements.

Section 121(d)(3) of CERCLA applies to any CERCLA response action involving the off-site transfer of any hazardous substance, pollutant or contaminant (CERCLA wastes). This section of the statute is interpreted in the OSR. The purpose of the OSR is to avoid having CERCLA wastes from response actions authorized or funded under CERCLA contribute to present or future environmental problems by directing these wastes to management units determined to be environmentally sound.

The OSR establishes the criteria and procedures for determining whether facilities are acceptable for the receipt of CERCLA wastes from response actions authorized or funded under CERCLA. The OSR establishes compliance criteria and release criteria and establishes a process for determining whether facilities are acceptable based on those criteria. The OSR also establishes procedures for notification of unacceptability, reconsideration of unacceptability determinations, and re-evaluation of unacceptability determinations.

On October 27, 2021, the Utah Department of Environmental Quality (UDEQ) issued a Compliance Advisory to Energy Fuels Resources (USA) Inc. (Energy Fuels) for suspected violations of the Clean Air Act National Emission Standards for Hazardous Air Pollutants (“NESHAP”) at 40 C.F.R. Part 61, Subpart W. The Compliance Advisory noted solids observed above the liquid surface of the Cell 4B impoundment, indicating a failure to maintain liquid levels in the non-conventional impoundment in accordance with the Subpart W regulations at 40 C.F.R. § 61.252(b). Consistent with the OSR, which authorizes EPA to make findings based on available information or based on its own findings, 40 CFR § 300.440 (c)(3), EPA’s Air and Toxics Enforcement Branch has determined these solids above the liquid surface violate 40 C.F.R. § 61.252(b) of Subpart W, and that the violation has persisted since at least May of 2020. The solid materials observed in the cell are not all composed of the crystalline material that were excepted from the definition of solid materials in the letter from EPA’s Office of Air and Radiation to Energy Fuels last year.

Using the February 27, 2020, Energy Fuels Annual Report, which identifies the measured radon emission rates for White Mesa’s conventional impoundment (Cell 3), EPA estimates that the uncovered material in Cell 4b is emitting approximately ten times the radon emissions of the covered material in the cell. This is analogous to the radon emission differences in Cell 3, which contains the same material, of covered and uncovered material. This shows that covering the solid tailing material with liquid provides a nearly 10x reduction in radon emissions.

Pursuant to 40 C.F.R. § 300.440(d)(9), the EPA has determined that the facility’s unacceptability is immediately effective due to the egregious nature and duration of the violation.

The OSR provides Energy Fuels an opportunity to request an informal conference with the EPA Region 8 to discuss the basis for your facility’s unacceptability determination. The informal conference request must be made in writing within ten calendar days from the date of this letter. In addition to, or in lieu of holding such a conference, you may submit written comments to me within thirty calendar days from the date of this letter.

If information presented in any requested informal conference or written comments does not support a finding of acceptability, EPA will inform you in writing that the determination of unacceptability remains. Since this determination becomes effective immediately pursuant to 40 C.F.R. § 300.440(d)(9), the transport of CERCLA wastes to your facility in accordance with the OSR shall cease on the date of your receipt of this letter.

Within ten calendar days of hearing from the EPA Region 8 after the informal conference or the submittal of written comments, you may request a reconsideration of the unacceptability determination from the Regional Administrator. The Regional Administrator, at her discretion, may agree to review the determination. Such a review, if agreed to by the Regional Administrator, will be conducted within sixty calendar days of the date of this letter, if possible, but the review will not stay the effective date of this determination.

This letter is being sent to you by both email with a read-receipt requested and by certified U.S. mail in order to ensure that you receive it promptly. If you wish to request an informal conference or to submit written comments, or if you have any questions regarding this letter, you may contact me at (303) 312-6354 or pearson.janice@epa.gov.

Sincerely,

**JANICE
PEARSON**

 Digitally signed by JANICE
PEARSON
Date: 2021.12.02 07:28:51
-07'00'

Janice A. Pearson
Branch Chief
RCRA/OPA Enforcement Branch

cc: Doug Hansen, UDEQ
Shahid Mahmud, OMDP
Robin Anderson, EPA-OLEM