July 29, 2014

Via Certified US Mail

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Michael A. Zody, Attorney at Law
Parsons, Behle, & Latimer
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Re: Notice of Intent to Sue Energy Fuels Inc., Energy Fuels Holding Corp., EFR White Mesa LLC, and Energy Fuels Resources (USA) Inc. for Violations of the Clean Air Act at the White Mesa Uranium Mill.

To Those Addressed Above,

On behalf of the Grand Canyon Trust and its members, we write to give the owners and operators of the White Mesa Uranium Mill – Energy Fuels Inc., Energy Fuels Holding Corp., EFR White Mesa LLC, and Energy Fuels Resources (USA) Incorporated (collectively referred to as "Energy Fuels") – notice that the Grand Canyon Trust intends to file a civil action against Energy Fuels for violations of the federal Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., which have occurred and continue to occur at Energy Fuels' White Mesa Uranium Mill ("Mill") located in San Juan County, Utah.

The radon emissions from Cells 2 and 3 at the Mill have violated and currently violate the radon emission standard set forth in the National Emissions Standards for Hazardous Pollutants ("NESHAPs") Subpart W. 40 C.F.R. § 61.252(a). Additionally, the simultaneous operation of more than two tailings impoundments at the Mill violates Subpart W's work practice standards. *Id*. at § 61.252 (b). Finally, Energy Fuels' measurements of radon-flux at Cell 3 in 2013 violates the monitoring and notification protocols and reporting standards set forth in Subpart W. 40 C.F.R. § 61.253, § 61.254 and 40 CFR 61 Appendix B, Method 115. Energy Fuels' past and ongoing failure to meet Subpart W's emissions, monitoring, notification and reporting standards violates the CAA. 42 U.S.C. § 7412(f)(4) ("No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard"); 42 U.S.C. § 7412(i)(3)(A)("…no person may operate such source in violation of such standard, limitation or regulation …"). The CAA's citizen suit provision authorizes the Grand Canyon Trust to file suit against Energy Fuels after this notice is served. 42 U.S.C. § 7604 (a)(1), § 7604 (b). To the extent required by law, with this letter, the Trust is providing you with the required notice before proceeding to federal court.

I. Factual Background

1. Health Risks from Radon-222 Exposure

Radon-222 is a cancer-causing radioactive gas that is emitted from uranium mills and the stored wastes created by extraction of uranium. For every pound of yellowcake produced, approximately one ton of still-radioactive processing wastes are left at the mill. The United States Environmental Protection Agency ("EPA") has stated that, "there is no safe level of radon – any exposure poses some risk of cancer." United States Environmental Protection Agency, *A Citizen's Guide to Radon*, available at http://www.epa.gov/radon/pubs/citguide.html. Tailings impoundments, the disposal pits for radioactive mill waste, are the most significant source of Radon-222 from uranium mills. Radon-222 atoms emitted from these tailings impoundments attach themselves to airborne dust particles and, in this form, can travel many miles before decaying. People breathing air downwind of tailings impoundments are likely to inhale the radioactive dust. This dust sticks to the lining of the lungs where it irradiates the fluids and tissues, and increases the risk of lung cancer forming.

Radon-222 is the second leading cause of lung cancer in the United States where it causes 21,000 deaths annually. United States Environmental Protection Agency, *A Citizen's Guide to Radon*, available at http://www.epa.gov/radon/pubs/citguide.html. In addition to causing lung cancer, exposure to Radon-222 is linked to genetic defects, increases in mortality, and increases in serious irreversible illness. *Id*. Vicinity to impoundments influences cancer rates, and the EPA has found that "the relatively few people who live within a few kilometers of tailings piles may receive individual exposures as much as a hundred times the exposures to individuals at greater distances." Environmental Protection Agency: Office of Radiation Program, *Health Risks to Distant Populations from Uranium Mill Tailings Radon*, Technical Note ORP/TAD-80-1, 27 (May, 1981).

2. NESHAP Subpart W

The CAA establishes the National Emission Standards for Hazardous Air Pollutants. Radon is designated as a hazardous air pollutant under the CAA. 42 U.S.C. § 7412(b); 44 Fed. Reg. 21704 (April 11, 1979). The emissions of Radon-222 from uranium mill tailings impoundments are regulated by NESHAP Subpart W, which applies to owners or operators of facilities licensed to manage uranium byproduct materials during and following the processing of uranium ores, facilities commonly referred to as uranium mills and their tailings. 40 C.F.R. § 61.250 *et seq*. Through Subpart W, EPA has attempted to protect human and environmental health from the ongoing hazards posed by the disposal and storage of uranium tailings at active uranium mills – including exposure to Radon-222 emissions. Subpart W sets forth a Radon-222 emissions limit and work practice standards. The emissions limit mandates that Radon-222 emissions from existing impoundments not exceed 20 pCi/m^2- sec. 40 C.F.R. § 61.252(a). The work practice standard limits mills to two operational impoundments. *Id*. at § 61.252(b)(1). Subpart W also contains notification and reporting requirements intended to ensure that the standards set forth in 40 C.F.R. § 61.252(a) are met.

Subpart W's emissions limit and the work practice standards are intended both to protect human health from Radon-222 exposure, and to ensure timely reclamation of mill sites. Environmental Protection Agency, National Emissions Standards for Hazardous Air Pollutants (NESHAPs): *Standards for Radon-222 Emission from Licensed Uranium Mill Tailings*: Final Rule, 51 Fed. Reg. 34055, 34059, 34061 (Sept. 24, 1986). With regard to the work practice standards, EPA recognized that the volatile nature of the uranium industry could lead to periods of non-operation when tailings impoundments could dry and emit more Radon-222. This informed EPA's decision to limit the number of operational impoundments and, by doing so, "significantly reduce[s] the amount of unreclaimed tailings at the end of a mill's lifetime…By making final reclamation easy, the potential for larger areas of dry tailings to remain uncovered is avoided, and this too, greatly reduces radon emissions." *Id*. at 34061.

3. Identity of Noticed Corporate Entities

Energy Fuels Inc. owns and operates the White Mesa Mill. Energy Fuels Inc. is a Canadian company incorporated in 1987 under the name Volcanic Metals Exploration Inc. In May 2006, Volcanic Metals Exploration Inc. changed its name to Energy Fuels Inc. The registered and head office of Energy Fuels Inc. is located at 2 Toronto Street, Suite 500, Toronto, Ontario, M5C 2B6,

Canada. Energy Fuels Inc.'s principal place of business and corporate office in the United States is located at 225 Union Blvd., Suite 600, Lakewood Colorado 80228, USA.

Energy Fuels Inc. conducts its business through a number of subsidiaries. Many of Energy Fuels Inc.'s U.S. assets – including the White Mesa Mill – are owned and operated directly or indirectly through Energy Fuels Inc.'s wholly owned subsidiary Energy Fuels Holdings Corp. Energy Fuels Holding Corp. is incorporated in Delaware and Colorado. All of Energy Fuels' U.S. properties – including the White Mesa Mill – are operated by Energy Fuels Resources (USA) Inc. Energy Fuels Resources (USA) Inc. is a wholly-owned subsidiary of Energy Fuels Holdings Corp. and Energy Fuels Inc. Energy Fuels Inc. and Energy Fuels Holding Corp. own the White Mesa Mill through their subsidiary EFR White Mesa LLC.

Energy Fuels Resources (USA) Inc. is the permit holder for the Mill's radioactive materials license [Utah Division of Radiation Control, Radioactive Material License No. UT 1900479], groundwater discharge permit [Utah Division of Water Quality, Groundwater Discharge Permit No. UGW370004], and air approval order [Utah Division of Air Quality, DAQE-AN0112050018-11], all of which were issued to Energy Fuels Resources (USA) Inc. by agencies within the Utah Department of Environmental Quality.

At all times relevant to the violations described in this notice letter, Energy Fuels Inc., Energy Fuels Holding Corp.. EFR White Mesa LLC, and Energy Fuels Resources (USA) Inc. acted as the owners and operators of the White Mesa Mill. All four corporate entities are the persons responsible for the violations of Subpart W described below.

4. Energy Fuels' White Mesa Mill

The White Mesa Uranium Mill is the only conventional uranium mill operating in the United States. The Mill is located in San Juan County, Utah, within ten kilometers of two communities. Three hundred members of the Ute Mountain Ute tribe live five kilometers downwind and downgradient (south) of the mill in White Mesa, Utah. The largest city in San Juan County, Blanding Utah – population 3,000 – is located approximately ten kilometers north of the Mill.

Energy Fuels operates the Mill for two main purposes. First, Energy Fuels operates the Mill to process conventional uranium ore that is mined from Energy Fuels' uranium mines on the Colorado Plateau. The remainder of the Mill's operations serve a second purpose – namely the processing and disposal of radioactive waste material from sites across the United States. Alternate feed, an informally coined agency term for this radioactive waste, is defined as uranium-bearing residues from uranium processing facilities, industrial and military remediation efforts, as well as soils contaminated with natural uranium. The Mill has been paid to accept and process radioactive waste from sites across the United States, including sites designated through the Formerly Utilized Remedial Action Program. *See, e.g.*, Amendment 10.12 to License Number UT 0900479 ("the licensee is authorized to proceed and process source material from the Ashland 1 and Seaway Area D Formerly Utilized Sites Remedial Action Program (FUSRAP) site."). Energy Fuels is currently proposing to accept radioactive waste from the Midnite Mine Superfund Site located near Spokane Washington. Energy Fuels, Statement of Basis for Dawn Mining Amendment to Radioactive Material License No. UT 1900479, August 2013.

II. Energy Fuels' Violations of Subpart W

1. Radon-222 Emissions from Cell 3 Exceeded Subpart W's 20 pCi/m^2-sec Emission Limit in 2013

A. Standards

As set forth in 40 C.F.R. § 61.252(a), Subpart W's emissions limit provides: "[r]adon-222 emissions to the ambient air from an existing uranium mill tailings pile shall not exceed 20 pCi/m^2-sec (1.9 pCi/(ft2-sec) of radon-222." Pursuant to 40 C.F.R. § 61.253, compliance with the 20 pCi/m^2-sec limit is determined annually through the use of Method 115 of Appendix B to 40 C.F.R. § 61. *See* 54 Fed. Reg. 51,653, 51,709 (Dec. 15, 1989) (National Emission Standards for Hazardous Air Pollutants; Radionuclides; Final Rule and Notice of Reconsideration).

Among other things, Method 115 prescribes the frequency at which a mill may measure emissions from a tailings impoundment. 54 Fed. Reg. at 51709 (Friday, Dec. 15, 1989). A mill may choose to measure emissions once-a-year, or more frequently over a one-year period. If the owner chooses to monitor more frequently, Method 115 allows for weekly, monthly or quarterly intervals. *Id*. If the operator chooses weekly, monthly, or quarterly monitoring, the annual radon flux is found by calculating the arithmetic mean of the mean radon flux for each measurement period. *Id*. A mill must notify EPA and/or the relevant agreement state of its monitoring frequency. *Id*.

Method 115 also sets forth protocols and a formula used to calculate the mean radon flux for a tailings impoundment for each measurement period. Method 115 divides tailings impoundments into four regions: water covered areas, beaches, dry top surface areas, and sides, except where earthen material is used in dam construction. *Id*. Method 115 dictates that the mean radon flux for beaches, dry top surface areas, and sides for impoundments that do not use earthen material in dam construction be determined for each testing event using at least 100 regularly spaced radon-flux measurements for each region. *Id*. Once the mean radon flux for each region is determined, Method 115 prescribes a weighted average formula to determine the mean radon flux for the entire tailings impoundment. *Id*. at 51710.

Method 115 imposes certain restrictions on the radon flux measurements. Among other things, when measurement is performed once per year, "measurement shall not be performed if the ambient temperature is below 35 degrees Farenheit or if the ground is frozen." *Id*. at 51709. Recognizing that the presence of water temporarily reduces radon flux, Method 115 forbids operators from initiating measurements within 24 hours of a rainfall, or from using measurements if the radon-collectors are surrounded by water. *Id*. For all measurements, "the weather conditions, moisture content of the tailings and area of the pile covered by water existing at the time of the measurement shall be chosen so as to provide measurements representative of the long term radon flux from the pile." *Id*. Method 115 requires that a mill operator must report any condition or unusual event that occurred during the measurements that could significantly affect the results. *Id*. at 51710.

B. Violations

i. Violation of the Emission Standard set forth in 40 C.F.R. 61.252 (a)

Cell 3 at the White Mesa Mill is an "existing impoundment" within the meaning of Subpart W. It was built in 1982 and is licensed to accept tailings under both the Mill's groundwater discharge permit and the radioactive materials license. Accordingly, as Energy Fuels and the Utah Division of Air Quality recognize, the 20 pCi/m^2-sec radon-flux standard of 40 C.F.R. § 61.252 (a) applies to Cell 3. Energy Fuels Resources (USA) Inc., *Energy Fuels Resources 2013 Annual Flux Monitoring Report for Tailings Impoundment 3*, March 27, 2014 (hereinafter Cell 3 2013 Annual Report).[1]

Energy Fuels took three radon-flux measurements during the 2013 calendar year. Annual Report at 1. The first measurement took place on June 11, 2013. *Id*. Energy Fuels reported that the mean radon flux for the entire Cell 3 based on the June 11, 2013 sampling event was 22.7 pCi/m^2-sec. *Id*. at 14. Energy Fuels originally intended for the June 11, 2013 monitoring event to function as the one-time measurement for Cell 3. *Id*. at 40, 73. However, because the radon-flux exceeded the 20 pCi/m^2-sec standard, Energy Fuels decided to take two additional measurements in September and December of 2013. *Id*. at 40. 73. The second measurement took place on September 23, 2013. *Id*. at 1. Energy Fuels reported that the mean radon flux for Cell 3 based on the September 23, 2013 sampling event was 28.4 pCi/m^2-sec. *Id*. at 47. The third measurement took place on December 4, 2013. *Id*. at 1. Energy Fuels reported that the mean radon flux for Cell 3 based on the December 4, sampling event was 7.1 pCi/m^2-sec. *Id*. at 80.

The only valid measurement for determining compliance based on Method 115 was the June 11, 2013 monitoring event and based on this measurement, the radon-emission standard was violated. Aside from the June 11, 2013 measurement, Energy Fuels' attempts to perform radon flux measurements for Cell 3 in 2013 do not comply with the protocol set forth in Method 115. First, Method 115 allows for weekly, monthly, quarterly, or one time monitoring. Energy Fuels does not have sufficient data to utilize the weekly, monthly, or quarterly monitoring options permitted by Method 115 because it only made three measurements.

Next, Energy Fuels' September 23, 2013 radon-flux measurement for Cell 3 is invalid. Rather than calculating the radon-flux average for the beach region in September 2013, Energy Fuels used the mean radon-flux obtained on June 11, 2013 for the beach region. Cell 3 2013 Annual Report at 40. The only September measurements that were taken in September were the radon-flux for Cell 3's dry top surface region. *Id*. at 42. Energy Fuels used the June data for the beach region and the September data for the dry top surface region to average the total Cell 3 radon-flux measurement in September. *Id*. Put simply, the September measurement does not reflect the radon-flux from Cell 3 in September. Notably, even with this calculation error, radon-flux from Cell 3 exceeded the 20 pCi/m^2-sec standard established by 40 C.F.R. § 61.252(a); Energy Fuels reported that the mean radon flux in September was 28.4 pCi/m^2-sec. *Id*. at 47

[1] Energy Fuels does not consecutively number the pages of its Annual Report. Therefore, the Trust's citations are to the Annual Report's pdf pages.

Energy Fuels' December 4, 2013 radon-flux measurement is also invalid. Just as it did in September, Energy Fuels used the data obtained on June 11, 2013 for the beach region rather than take new measurements in December. *Id*. at 73. The only December data that actually took place in December is the mean radon-flux for the dry top surface region. *Id*. Energy Fuels then used the June data for beaches and the December data for the dry top surface region to calculate the entire Cell 3 radon-flux measurement in December. *Id*. Again, put simply, the December measurement does not report the radon-flux for Cell 3 in December.

Additionally, the climatic conditions in December render the measurements invalid. Energy Fuels reported that the mean ambient air temperature on December 4, 2013 was 32 degrees Farenheit. *Id*. at 76. Energy Fuels reported that .02 inches of rain were found in the on-site raingauge between December 3 and 4 of 2013, and that a ¼ inch of snow fell, which melted by mid-day. *Id*. The weather conditions, moisture contents of the tailings, and the presence of water on December 3 and 4 do not function to provide measurements representative of the long-term radon flux from the pile as Method 115 intends. *See* 54 Fed Reg. 51710 (Dec. 15, 1989). For all of the above-stated reasons, the December measurement of 7.1 pCi/m^2-sec is invalid and cannot be used to determine the radon-flux from Cell 3 in 2013.

In conclusion, the June 11, 2013 measurement is the only measurement that complies with Method 115. The June 2013 measurement exceeded the 20 pCi/m^2-sec standard established by 40 C.F.R. § 61.252(a), and therefore Cell 3 violated the radon emission standard in 2013.

2. Violations of the Notification and Reporting Requirements in 40 C.F.R. § 61.253 & § 61.254

A. Standards

40 CFR §§ 61.253-61.254 impose notification, reporting, and recordkeeping requirements relating to the emission standard set forth in § 61.252(a). 40 C.F.R. § 61.253 mandates that compliance with the emission standard in 40 C.F.R. § 61.252(a) "shall be determined annually through the use of Method 115 of appendix B." 40 C.F.R. § 61.253 also prescribes the method by which mill operators must inform EPA of the radon-flux measurement schedule for existing tailings impoundments. 40 C.F.R. § 61.253. The mill operator must provide EPA with a schedule of the measurement frequency to be used. *Id*. The schedule may be submitted to EPA prior to or after the first measurement period. *Id*. The operator must notify EPA 30 days prior to any emissions test. *Id*.

B. Violations

i. Energy Fuels' Radon-flux Measurements for Cell 3 in 2013 Do Not Comply with Method 115

40 C.F.R. § 61.253 mandates that compliance with the emission standard in 40 C.F.R. § 61.252(a) "shall be determined annually through the use of Method 115 of appendix B." Energy Fuels violated this requirement by failing to adequately notice EPA and Utah DAQ of its annual measurement schedule, failing to take measurements from the side regions of Cell 3[2]; taking

[2] Energy Fuels did not take measurements from the side regions of Cell 3 during the June 11,

December measurements when snow, temperature, and moisture conditions did not provide measurements representative of Cell 3's long-term radon flux; and averaging the results of measurements taken over a six month period. Energy Fuels' failure to comply with Method 115 constitutes a violation of 40 C.F.R. § 61.253.

ii. Energy Fuels Did Not Inform EPA of the Radon-flux Measurement Schedule for Cell 3 in 2013 as Required by 40 C.F.R. § 61.253.

Energy Fuels did not comply with 40 C.F.R. § 61.253 in its communications with EPA and Utah DAQ regarding radon flux measurement frequency at Cell 3 during 2013. In April, Energy Fuels informed EPA that it was taking a one-time radon-flux measurement for 2013 in June of 2013. In accordance with that schedule, Energy Fuels measured the radon flux from Cell 3 on June 11, 2013 and determined that the radon flux was 22.7 pCi/m^2-sec. Energy Fuels then changed its measurement frequency from the schedule submitted to EPA in April. Specifically, because radon-flux exceeded the 20 pCi/m^2-sec standard, Energy Fuels decided to take two additional measurements and characterize the new measurement schedule as "quarterly monitoring." Energy Fuels' failure to comply with the requirements of 40 C.F.R. § 61.253 by changing its measurement schedule subsequent to notifying the EPA and Utah DAQ constitutes a violation of Subpart W.

III. Supplemental Notice

On January 29, 2014, the Grand Canyon Trust provided Energy Fuels Inc. with a 60 day Notice of Intent to sue under the Clean Air Act for violations of the radon emission standard at Cell 2 and the simultaneous operation of more than two tailings impoundments. Energy Fuels received the 60-day notice and was placed on actual notice. Based on the notice, Energy Fuels contacted the Trust's counsel through its attorney Michael A. Zody, whose email indicated his "firm [Parsons Behle & Latimer] represents Energy Fuels" and sought to discuss the violations alleged in the notice. Parsons Behle & Latimer has represented the owners and operators of the White Mesa Mill through various ownership changes, including ownership by International Uranium, Denison Corporation, and those entities' various subsidiaries.

Through continuing discussion, a courtesy copy of the filed complaint was provided to Energy Fuels' counsel, the Trust made accommodations for Energy Fuels' timing requests, and Mr. Zody agreed to accept service on behalf of Energy Fuels. Although the noticed violation was not resolved during the notice period or in the post-complaint discussions with Mr. Zody and two

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September 24, or December 4, 2013 sampling events, and provided no justification for its failure to do so. The only circumstance that could excuse Energy Fuels from measuring radon flux from the side regions is if earthen materials are used in the dam construction for Cell 3. 54 Fed. Reg. at 51709 (Friday, Dec. 15, 1989). To the extent that this exception does not apply to Cell 3, all three of Energy Fuels' 2013 Cell 3 radon-flux measuring events are invalid, and Energy Fuels violated 40 C.F.R § 61.252 (a), 40 C.F.R § 61.253, and § 61.254 with respect to Cell 3 in 2013.

Energy Fuels principals, no mention was made of any defects in the January 29, 2014 notice. It is the Trust's position that there is no defect in the notice. Indeed the notice resulted in meaningful discussions between Energy Fuels and the Grand Canyon Trust regarding the substantive and procedural issues raised in both the notice letter and the complaint.

Nonetheless, Energy Fuels now has alleged that the Trust's notice was deficient. In an abundance of caution and without conceding any deficiencies in the prior notice, the Trust provides this protective supplemental notice of intent to sue all owners and operators of the White Mesa Mill – Energy Fuels Inc., Energy Fuels Holding Corp., EFR White Mesa LLC, and Energy Fuels Resources (USA) Incorporated. Please let us know, in writing, whether any other corporate entity owning or operating the White Mesa Mill when the alleged violations took place is not listed in this notice letter; Parsons, Behle, & Latimer should have this information.

1. Energy Fuels Has Six Impoundments In Operation

Subpart W limits mill operators utilizing phased disposal to operating only two impoundments at one time. 40 C.F.R. § 61.252 (b)(1). As set forth in 40 C.F.R. § 61.252 (b), the work practice standards applicable to the Mill provide:

> "(1) Phased disposal in lined tailing impoundments that are no more than 40 acres in area and meet the requirements of 40 CFR 192.32 (a) as determined by the Nuclear Regulatory Commission. The owner or operator shall have no more than two impoundments, including existing impoundments, in operation at any one time." *Id*.

A tailings impoundment is "in operation" from "the day that tailings are first placed in the impoundment until the day that final closure begins." 40 C.F.R. § 61.251(e); 42 U.S.C. § 7412(i)(3)(A).

State documents detail the violations of the impoundment limit that have been ongoing for the past five years. The Mill's Radioactive Material License Renewal and the Groundwater Discharge Permit for the Mill authorize tailings disposal in five separate impoundments. Energy Fuels' Groundwater Discharge Permit states "tailings disposal in existing Tailings Cells 1, 2, and 3 is authorized by this Permit." Utah Division of Water Quality, Groundwater Discharge Permit No. UGW370004, Part I. D. 2. Energy Fuels' Radioactive Material License Renewal states "Mill process and wastewater storage and tailings disposal shall be limited to existing engineering design, construction, and operation of Tailings Cells 1, 2, 3, 4A, and 4B, as authorized in Part I. D. of the Groundwater Discharge Permit…" Utah Division of Radiation Control, Radioactive Material License UT 1900479, Section 9.1.

In addition to the impoundments termed Cells 1, 2, 3, 4A and 4B, Roberts Pond also qualifies as an impoundment because it receives uranium byproduct material. Subpart W applies to the management of "uranium byproduct materials" created during the operation of a facility. 40 C.F.R. § 61.250. As defined in 40 C.F.R. § 61.251 (g), "uranium byproduct material or tailings means waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content." The Utah Division of Radiation Control has described the Roberts Pond as an impoundment for containing and storing "process spills and overflows." Email from Harold R. Roberts, Executive Vice President and Chief Operating Officer of Energy

Fuels, to Lauren Morton, Environmental Program Manager at Utah Division of Radiation Control (Feb. 19, 2004). These process spills and overflows are "uranium byproduct material," which renders Roberts Pond an impoundment subject to Subpart W.

Cells 1, 2, 3, 4A, 4B, and Roberts Pond are all "in operation" in violation of Subpart W's requirement that only two impoundments be in operation at one time. There is nothing in the Radioactive Material License Renewal, the Groundwater Discharge Permit, or any other document that indicates that final "closure" has actually begun with respect to any of the six impoundments. Indeed, Energy Fuels' NESHAP Part 61 Subpart W Annual Report for Cell 2 confirms that impoundments are in operation, and have not yet entered closure. Energy Fuels, NESHAP Part 61 Subpart W Annual Report (April 17, 2013) at 2, ("[a]t present there are no Subpart T uranium mill tailings at this site…).

The simultaneous operation of six impoundments significantly increases the amount of unreclaimed tailings that will be present at the end of the Mill's operations. Consequently, there is greater likelihood that larger areas of tailings will experience drying, and that nearby populations and the environment will experience increased exposure to Radon-222.

2. Radon Emissions at Cell 2 Exceeded the 20 pCi/m^2-sec in 2012 and 2013.

In 2012, both the State of Utah and Energy Fuels found Radon-222 emissions from Cell 2 violated the radon emission standard set forth in 40 C.F.R. § 61.252 (a). According to Energy Fuels and Utah DAQ, monitoring performed in 2012 documented radon emissions from Cell 2 that averaged 25.9 pCi/m2-sec. Utah DAQ Memorandum on Energy Fuels, NESHAP Part 61 Subpart W Annual Report (April 17, 2013) ("Status: In Violation. The 2013 annual report indicated that Cell #2 exceed the 20.00 pCi/m^2-sec of radon-222 in June, 2012"). As Energy Fuels acknowledged in its Annual Report to Utah Division of Air Quality, this exceeded the 20.0 pCi/m^2-sec standard established in the Subpart W NESHAP. *Id*. at 1.

As a result of these 2012 violations, Energy Fuels commenced monthly monitoring of Cell 2 in April of 2013 as required by Subpart W and the State of Utah. 40 C.F.R. § 61.254. Averaging the results of Energy Fuels' nine monthly monitoring reports of Cell 2 in 2013 results in a total annual radon-222 emission of 20.42 pCi/m^2-sec. Energy Fuels and Utah DAQ recognized that radon emissions from Cell 2 exceeded the 20 pCi/m^2-sec standard in 2013 and that Energy Fuels violated the radon emission standard in 2013. Utah DAQ Memorandum on Energy Fuels, NESHAP Part 61 Subpart W Annual Report (April 3rd, 2014) ("Status: In Violation. The 2013 annual report indicated that Cell #2 exceeded the 20.00 pCi/m^2-sec of radon-222").

IV. Notice and Relief to be Sought

The citizen suit provision of the Clean Air Act allows the Grand Canyon Trust to commence suit in a United States district court against you for violations of an emission standard or limitation. 42 U.S.C. § 7604(a)(1). An emission standard or limitation includes, among others, any requirement under 42 U.S.C. § 7412, any condition or requirement applicable under a SIP approved by the EPA, and any permit term or condition. 42 U.S.C. § 7604(f)(3), (4). This letter serves as your notice that the Grand Canyon Trust intends to file suit in federal district court to enforce the Clean Air Act for the violations described above as follows: (1) violations of the emission standards at Cell 2 in 2012 and 2013, (2) violations of the emission standard at Cell 3 in

2013, (3) violations of Subpart W's work practice standards, and (4) violations of the compliance and reporting standards with respect to compliance with Method 115 and measurement schedules at Cell 3 in 2013. The Grand Canyon Trust will ask the district court to impose appropriate injunctive relief, civil penalties of up to $37,500 per day per violation, a beneficial environmental project, 42 U.S.C. § 7604(g)(2), mitigation, and the Grand Canyon Trust's costs of litigation including attorneys' fees.

V. Party Giving Notice

The party giving notice is the Grand Canyon Trust. Grand Canyon Trust has its headquarters located at 2601 N. Fort Valley Road, Flagstaff, AZ 86001. The Grand Canyon Trust requests that all communication be provided to its attorneys:

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If you believe any of the facts described above are in error or have any information indicating that you have not violated the Clean Air Act, we urge you to contact the undersigned counsel immediately. Given that public and environmental health are at stake, the Grand Canyon Trust is interested in obtaining prompt resolution of these violations and is willing to discuss the claims alleged. However, if these discussions do not occur, the Grand Canyon Trust will file suit.

Attorney for Grand Canyon Trust

/s/ Travis Stills
Energy and Conservation Law

COPIES SENT BY CERTIFIED MAIL TO:

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