Administrative Rule Review – ARR17-007
Legislative Service Office
August 11, 2017

AGENCY	Department of Environmental Quality
DATE SUBMITTED:	August 11, 2017
SUBJECT:	Uranium Recovery - Chapter 1 - General Provisions; Chapter 2 - Inspections, Violations and Enforcement; Chapter 3 - Radiation Protection Standards; Chapter 4 - Licensing requirements for Source and Byproduct Material; Chapter 5 - Notices, Instructions and Reports to Workers; Chapter 6 - Financial Assurance; Chapter 7 - Fees; Chapter 8 - Risk Informed Performance Based Licensing; Chapter 9 - Transportation of Radioactive Material
NATURE OF RULES:	Substantive, procedural
STATUTORY AUTHORITY:	2016 Senate Enrolled Act 6, 2017 House Enrolled Act 18; W.S. 35-11-112(a)(i), 35-11-114(b), 35-11-2001, 35-11-2002(b)

DETERMINATION OF PROCEDURAL COMPLIANCE BASED UPON INFORMATION SUBMITTED BY DEPARTMENT OF ENVIRONMENTAL QUALITY TO LSO: Apparently complete to date. Pursuant to W.S. 28-9-103(d), LSO provided notice of the proposed adoption of these new rules promulgated in response to 2016 Senate Enrolled Act 6 and 2017 House Enrolled Act 18. The agency received and responded to comments from the Nuclear Regulatory Commission, the Wyoming Mining Association, the Powder River Basin Resource Council, the Wyoming Association of Professional Archaeologists and Uranium Watch.

SUMMARY OF RULES: Chapter 1 provides definitions, along with provisions concerning units of exposure, dose, and radioactivity, communications, reports and applications, deliberate misconduct, exemptions, and records requirements. Chapter 2 governs inspections, enforcement and penalties in regard to the authorized and unauthorized extraction or concentration of uranium or thorium in source material and ores at milling facilities. Chapter 3 establishes standards to protect against ionizing radiation resulting from activities conducted pursuant to a license issued by the agency. Chapter 4 provides licensing requirements for source and byproduct material as well as requirements for decommissioning and long-term care and maintenance of byproduct material. Chapter 5 provides requirements for notices, instructions and reports that licensees must provide workers. Chapter 6 specifies financial assurance requirements for decontamination, decommissioning, reclamation, restoration, disposal and any other activity for which the agency requires financial assurance. Chapter 7 establishes fees for radiation control services rendered by the agency and provisions for payment. Chapter 8 creates a risk-informed, performance-based regulatory framework for licensing and inspections. Chapter 9 provides requirements for packaging, preparing for shipment and transporting licensed materials. These rules also incorporate by reference applicable federal code provisions.

TECHNICAL NOTES FOR AGENCY'S CONSIDERATION:

- The manner in which terms are defined in Chapter 1 of these rules is inconsistent and in some cases the terms duplicate statutory language. "Recovery or milling" and "source material" are defined both in statute and Chapter 1. Chapter 1's definition of recovery or milling "refers to the definition in W.S. § 35-11-103," while the definition of source material is virtually identical to its definition in statute, i.e., it does not merely cite the statutory definition. The agency could address this inconsistency and duplication of statutory language by citing the statutory definition for all terms used in the rules which are defined in statute.
- Chapter 1's definition of "uranium milling" refers to "byproduct material as defined in W.S. § 35-11-103"; it is unclear why the statutory citation is referenced since "byproduct material" is defined in Chapter 1. The agency could consider deleting the statutory cite.

FINDINGS: The rules appear to be within the scope of statutory authority and legislative intent. Compliance with federal law has not been determined; it is assumed the Attorney General has provided that review.

STAFF RECOMMENDATION: That the rules be placed on the Consent List and be approved by Council as submitted by the agency.

Shaun McCullough
Staff Attorney

Josh Anderson
Senior Staff Attorney