



For Immediate Release:  
December 14, 2017

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## **Barrasso Calls on EPA to Withdraw Obama Administration's Uranium Rule**

*EPW chairman shares NRC's concerns with problematic EPA rule*

WASHINGTON, D.C. — Today, U.S. Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), sent a letter to Environmental Protection Agency (EPA) Administrator Scott Pruitt to express his concerns with the EPA's unjustified ground water monitoring rule for in situ uranium recovery (ISR). The Nuclear Regulatory Commission (NRC), the primary regulator of ISR activities, already requires ISR operators to conduct groundwater monitoring through license conditions.

In the [letter](#), Barrasso explains that he recently learned that the NRC has had substantive and jurisdictional concerns with EPA's proposals since the inception of EPA's rulemaking. Barrasso writes that he shares NRC's concerns and calls on EPA to withdraw the rule and work with the NRC to clarify the agencies' respective jurisdiction over ISR activities.

ISR is a method of producing uranium with minimal environmental disturbance. It offers a wide range of environmental and public health benefits, and is the principal means by which uranium is produced in the United States. The NRC ensures the safety of uranium recovery by inspection and enforcement of strict groundwater protection standards. The full letter is available [here](#), and below:

Dear Administrator Pruitt:

I am writing to restate my concerns about EPA's proposed rule on ground water and in situ uranium recovery (ISR) under 40 C.F.R. Part 192. EPA initially issued its rule on January 26, 2015. In 2016, I wrote to the Office of Management and Budget (twice) questioning EPA's justification for the rule and its cost-benefit analysis and called on the Obama Administration to withdraw the rule. On January 19, 2017 – the day before President Obama left office – EPA issued a second proposed rule. Since then, I have come to learn that the Nuclear Regulatory Commission (NRC) has had – from this rulemaking's inception – serious concerns with EPA's proposals. I share NRC's concerns about EPA's rule and ask that you

withdraw the rule.

The NRC has substantive and jurisdictional concerns about EPA's proposals. After EPA issued its 2015 rule, NRC Commissioner William Ostendorff asked NRC's General Counsel whether the rule reaches beyond EPA's authority to set "generally applicable standards" for ground water protection under the Uranium Mill Tailings Radiation Control Act (UMTRCA). On May 18, 2015, the General Counsel submitted a 20-page memo to the Commission stating, among other things, that if promulgated, the rule would reach beyond EPA's authority in key areas. The rule – rather than setting generally applicable standards – would impose implementation standards, which the Act delegates to the NRC, not EPA. At Commissioner Ostendorff's initiative, the Commission voted, in June of 2015, to authorize the General Counsel to convey both substantive and jurisdictional concerns to EPA. NRC's General Counsel did so in a July 28, 2015 letter.

After EPA repropoed the rule in 2017, the NRC elaborated upon its concerns. The NRC staff submitted 25 pages of comments on the rule to the Commission. With the knowledge and implicit consent of the Commission, the NRC staff submitted the comments to EPA on July 18, 2017. The comments explain that the NRC and its Agreement States "have been safely, securely, and successfully regulating ISR facilities since the 1970's." They state that "[i]n almost 40 years of operational experience, the NRC staff is aware of no documented instance of an ISR wellfield being the source of contamination of an adjacent or nearby aquifer, or of the non-exempt portion of the same aquifer in which ISR activities are being conducted." They explain that there is "No Health or Safety Justification for [the] Rulemaking." Finally, the comments detail how the rule "encroaches upon NRC's jurisdiction, and includes requirements that are not technically feasible or are unreasonably burdensome on...licensees without providing any equivalent benefit."

Since March 2011, prices for natural uranium have fallen by roughly 70 percent. In 2017, uranium producers in the U.S. are on track to produce the lowest amount of uranium since 1951 – before the U.S. had commercial nuclear power reactors. It is incumbent upon EPA to refrain from imposing regulations that are not technically feasible or are unreasonably burdensome on licensees. While Commissioner Ostendorff noted that the NRC has the authority to deviate from EPA's regulations on a site-specific basis should EPA exceed its authority under UMTRCA, he stated that this approach could easily lead to continuing conflict between the agencies and court challenges to NRC's actions. In order to end such conflict, I ask that, in addition to withdrawing EPA's rule, you sign a Memorandum of Understanding with the Commission clarifying EPA's authority to set generally applicable standards and NRC's authority to implement the standards.

Thank you in advance for your consideration and I look forward to your prompt response.

Sincerely,

John Barrasso, M.D.  
Chairman

### **Background Information:**

The EPW Committee has jurisdiction over EPA and the NRC.

On Jan. 26, 2015, the EPA issued a proposed rule requiring, among other things, that uranium recovery operators conduct up to 30 years of groundwater monitoring following ISR production.

On Oct. 5, 2016, the EPA sent its draft final rule to the Office of Management and Budget (OMB) for review.

On Oct. 20, 2016, Barrasso and Sens. John Cornyn (R-TX) and Deb Fischer (R-NE) sent a [letter](#) to OMB Director Shaun Donovan calling on the OMB to direct EPA to withdraw the rule. The letter also questioned the EPA's cost-benefit analysis and asked OMB to conduct its own cost-benefit analysis prior to taking any further action on the rule.

On Dec. 1, 2016, Barrasso and Sens. Capito (R-WV) and Inhofe (R-OK) sent a [letter](#) to the Howard Shelanski, Administrator of the Office of Information and Regulatory Affairs at OMB. The Senators explained that if EPA finalized its proposed rule, the rule would effectively end ISR production in the United States.

On Jan. 4, 2017, the EPA decided to re-propose the rule rather than issue a final rule. Barrasso [praised](#) EPA's decision not to finalize the rule.

On Jan. 19, 2017, the day before the Obama administration left office, the EPA proposed a revised ISR rule for comment.

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