

UTAH DIVISION OF WATER QUALITY

FRANK FILAS ENERGY FUELS RESOURCES (USA) CORP. - RIM MINE SW ¼ NW ¼ SECTION 29 T31S R25E IN SAN JUAN COUNTY, UT	NOTICE OF VIOLATION AND ORDER DOCKET NO. I12-04
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A. STATUTORY AUTHORITY

This **NOTICE OF VIOLATION and COMPLIANCE ORDER (NOV/CO)** is issued by the Director of the Utah Division of Water Quality (**DIRECTOR**) under the Utah Water Quality Act, as amended, Utah Code Ann. §§ 19-5-101 et seq. (the **ACT**), including Utah Code Annot. §§ sections 19-5-106, 19-5-111 and 19-5-115. This **NOV/CO** is also issued in accordance with the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-101 et seq. The **DIRECTOR** has authority to issue such **NOTICES AND ORDERS** in accordance with 19-5-111 of the Utah Code.

B. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. It is unlawful for any person to discharge a pollutant into waters of the state, unless the discharge is authorized by permit. Utah Code Ann. § 19-5-107(1)(a). Waters of the State means “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.” Utah Code Ann. § 19-5-102(23)(a). See also an identical definition at Utah Admin. Code § R317-1-1.31.
2. It is unlawful for any person to make any discharge not authorized under an existing valid discharge permit. Utah Code Ann. § 19-5-107(3)(a).
3. Utah Admin. Code § R317-2-7.1 prohibits any person from discharging, or placing any wastes or other substances, in a manner that may interfere with water’s designated uses, or to cause any of the applicable standards to be violated.
4. Part I.B of the **ENERGY FUELS RESOURCES (USA) CORP – RIM MINE** (hereinafter “**EFRRM**”) Utah Pollution Discharge Elimination System (UPDES) permit # UT0023922 states that discharges at any location not authorized under a UPDES permit are in violation of the Utah Water Quality Act.

5. *Utah Administrative Code (UAC) R317-8-4.1(1)(a)* requires compliance with all conditions of said permit and states that any permit noncompliance is a violation of the Act and is therefore grounds for enforcement action.
6. *UAC R317-2-13. Classification of Waters of the State* – Classifies the unnamed dry wash as 3D.
7. *UAC R317-2-14. Numeric Criteria* – Lists numeric criteria for Waters of the State.

C. FINDINGS OF FACT

1. **EFRRM** is an underground uranium / vanadium mine located at SW ¼ NW ¼ Section 29 T31S R25E in San Juan County, UT. **EFRRM** operates a water treatment system, which adds barium chloride to the mine water to reduce radium before discharging to the unnamed dry wash.
2. Since **EFRRM** is an underground / vanadium mine, **EFRRM** is subject to categorical effluent limitations found in 40CFR440.32.
3. **EFRRM** has been issued UPDES permit # UT0023922, which is effective until December 31, 2015.
4. **EFRRM's** treatment system is comprised of a holding pond, a treatment building, where a barium chloride solution is added to the holding pond water, and a settling pond, where the solids are settled out. The discharge is from the settling pond to the unnamed dry wash.
5. **EFRRM** has submitted discharge monitoring report (DMR) forms to the Division of Water Quality, in compliance with **EFRRM's** UPDES permit # UT0023922. Four DMRs indicate UPDES permit violations for Dissolved Radium 226.
6. Results of the DMR data for Dissolved Radium 226 are shown below with permit limit violations shown in bold font:

	Monitoring Period - 2012			
	January	May	October	November
Dissolved Radium 226: 30 day average, pCi/L	4.3	23	7.6	9.8
30 day average, permit limit, pCi/L	3	3	3	3
daily max, pCi/L	4.3	23	7.6	9.8
daily max, permit limit, pCi/L	10	10	10	10

D. VIOLATIONS

Based on the foregoing Findings of Fact, **EFRRM** has violated the following:

1. It is unlawful for any person to discharge a pollutant into waters of the state, unless the discharge is authorized by permit. Utah code Ann. § 19-5-107(1)(a).
2. It is unlawful for any person to make any discharge not authorized under an existing valid discharge permit. Utah Code Ann. § 19-5-107(3)(a).
3. *UAC R317-8-7.1(1)(a)* for not complying with all conditions of UPDES permit # UT0023922 as noted in C.6.
4. *Part I.D* of UPDES Permit # UT0023922 for failure to comply with effluent limits as noted in C.6.
5. *UAC R317-2-7.1* for discharging substances that may interfere with water's designated uses, or to cause any of the applicable standards to be violated as noted in C.6.

E. ORDER

Any compliance schedules submitted by the *permittee* as required by this Order must be submitted by the deadlines established in this Order and approved by the **DIRECTOR**. Once compliance schedules are approved by the **DIRECTOR**, the compliance schedule must be implemented according to the deadlines and requirements established in the compliance schedule(s) and/or this Order. Once approved, timeframes and requirements of any compliance schedule become equally binding on the *permittee*.

Based on the foregoing **FINDINGS OF FACT** and **VIOLATIONS**, and pursuant to Utah Code Ann. § 19-5-107 and 19-5-111, **EFRRM** is **HEREBY ORDERED** to:

1. Immediately initiate all actions necessary to achieve total compliance with all applicable provisions of the Utah Water Quality Act and the Water Quality rules in the Utah Administrative Code.
2. Describe in detail and submit to the **DIRECTOR** for review and approval within thirty (30) days of issuance of this NOV a written report including but not limited to:
 - a. Efforts taken to contain the discharge as well as clean up after the event.
 - b. A report of the estimated volumes of the discharge for each violation, which made it to the unnamed dry wash and final condition of the affected areas of the site and any affected downstream areas.

- c. Timeline of events leading up to the discovery of the discharge, efforts and actions taken to contain and eliminate the discharge, and people or agencies contacted in regards to the discharge.
- d. Considerations and corrective steps taken, where appropriate, to reduce, eliminate or prevent re-occurrence of the discharge.

F. NOTICE

This **NOTICE OF VIOLATION** and **COMPLIANCE ORDER (NOV/CO)** is effective immediately. **EFRRM** may contest this **NOV/CO** by submitting a request for Agency Action in writing as specified in Utah Admin. Code § R317-8-3. Any such request must be received by the **DIRECTOR** within 30 days of the **NOV/CO**'s issuance or the **NOV/CO** shall become final.

Compliance with the provisions of this **ORDER** is mandatory. The information requested will be considered in the evaluation of the extent of your compliance with the Water Quality Act and its underlying regulations and permit. Failure to respond fully and truthfully, or to adequately justify such failure to respond may subject **EFRRM** to further civil penalties or criminal fines under UCA 19-5-115.

All reports required under the Permit must be accompanied by the following certification, which is to be signed in accordance with UAC R317-8-3.4(4): "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

UCA 19-5-115 provides that violation of the **ACT** or a related order may be subject to a civil penalty of up to \$10,000 per day of violation. Under certain circumstances of willfulness or gross negligence, violators may be fined up to \$25,000 per day of violation.

Signed this day of , 2013.

UTAH DIVISION OF WATER QUALITY

Walter L. Baker, P.E.
Director