



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

REQUEST REPLY BY: 10/16/03

COMSECY-03-0046

September 30, 2003

Approved
as edited
hiffedug
10.1.03

MEMORANDUM TO: ✓ Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers
Executive Director for Operations

SUBJECT: POTENTIAL AGREEMENT STATE POLICY ISSUES FROM
AN NRC RESPONSE TO A CITIZEN'S QUESTIONS

Staff has prepared a response to Ms. Sarah Fields' (a Utah resident) questions on the policy and legal requirements of Agreement States adopting NRC guidance and policies once the Agreement States amend their agreements to include uranium milling. Ms. Fields' questions were prompted by an NRC response to questions from Mr. William J. Sinclair, Director, Division of Radiation Control, Utah Department of Environmental Quality, on the classification of 11e.(2) byproduct material at a uranium mill (Attachment 1). The NRC response to the Ms. Fields' questions (Attachment 2) has potential policy implications on the required acceptance of NRC policies and guidance by Agreement States in general.

The staff plans to proceed with the attached response to the citizen's questions in 10 working days unless directed otherwise by the Commission.

SECY, please track.

Attachments:

1. Ltr. to W. J. Sinclair from P. H. Lohaus dated March 7, 2003
2. Draft Response to Ms. Fields

cc: SECY
OCA
OGC
OPA
CFO

CHAIRMAN REC'D
03 OCT - 1 PM 3:29

Question from your April 15, 2003 E-mail.

Question: I would like to know what the relationship is between NRC policies and guidances pertinent to the regulation of Part 40 facilities and Agreement States that also regulate these facilities. What exactly is the legal status of NRC policies/guidances with respect [to] their applicability to Agreement States?

Response: ~~With respect to specific sections in Part 40, State and Tribal Programs (STP) Procedure, SA-200 (see specifically the 10 CFR Part 40 section of Appendix A to SA-200), which is available on the STP web site at <http://www.hsrp.ornl.gov/nrc/procedures/sa200.pdf>, identifies the unique regulatory requirements that must be adopted by Agreement States that are authorized to regulate uranium milling facilities for compatibility. NRC policies and guidance documents pertinent to the regulation of Part 40 facilities (in this specific case, source material milling facilities) are not matters of compatibility for Agreement States. However, Agreement States adopt and utilize similar guidance in their programs and NRC guidance is often used as the basis for State developed guidance. Also, see response below to question 6 in your April 20, 2003 e-mail and letter.~~



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*Copy to
subject to
Chairman's edits*

MEMORANDUM TO: Chairman Diaz
~~Commissioner McGaffigan~~
Commissioner Merrifield

FROM: William D. Travers *William Travers*
Executive Director for Operations

*Ellie Gifford
10/8/03*

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*Approved subject to the
edits of Chairman Diaz
as well as the attached
additional revision.*

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers *William Travers*
Executive Director for Operations

SUBJECT: POTENTIAL AGREEMENT STATE POLICY ISSUES FROM
AN NRC RESPONSE TO A CITIZEN'S QUESTIONS

[Signature]
10/14/03

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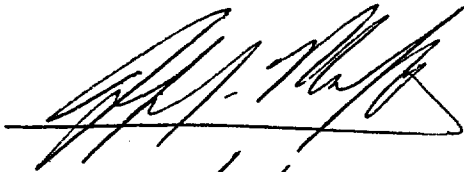
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Comments from Commissioner Merrifield on COMSECY-03-0046:

Response to question 9 should be modified as follows:

Response: An Agreement State may adopt its own regulations with respect to the disposal of non 11e.(2) byproduct material at a licensed uranium mill or 11e.(2) disposal facility located in the Agreement State. However, the U. S. Department of Energy (DOE) should approve the disposal of any non-11e.(2) material in the disposal cell, because DOE will ultimately be responsible for the long term custody of the site. For that reason, Agreement States should ensure that the disposal of non-11e.(2) byproduct material does not jeopardize transfer of the site to DOE. However, before approving the disposal of non-11e.(2) byproduct material on the site, the Agreement State should coordinate its actions and, if possible, obtain either an approval or a no objection from the U. S. Department of Energy (DOE). By statute, DOE is required to assume long term custody of 11e.(2) byproduct material if certain conditions are met. However, DOE is not required by statute to assume long term custody of non-11e.(2) byproduct material. Agreement States which permit disposal on a site of non-11e.(2) byproduct material without proper coordination with DOE could create uncertainty about the future transfer of the site to DOE.


10/14/03