

April 11, 2000

Katie Sweeney  
National Mining Association  
1130 17<sup>th</sup> Street, N.W.,  
Washington, D.C. 20036-4677

Dear Ms. Sweeney:

I am responding to your letter to Chairman Meserve of March 7, 2000, in which you raised concerns regarding statements in a recent Commission adjudicatory decision regarding the NRC's lack of jurisdiction over uranium-bearing material generated at facilities not licensed on or after the passage of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). I understand that the issue of NRC jurisdiction in this area is an important one to the National Mining Association (NMA) members.

In 1978, the passage of UMTRCA added section 83a to the Atomic Energy Act. That section requires NRC to impose certain terms and conditions relating to cleanup with respect to any "license issued or renewed after the effective date" of section 83 for covered activities, and also imposes such terms and conditions on any such "license in effect on the date of enactment" of the section. As you know, the NRC has expressed the view that the provision does not provide it with regulatory authority or responsibility over activities that were not under NRC license before the date of the enactment of section 83, if such activities were not licensed thereafter. In addition to the correspondence referenced in your letter, the NRC addressed this position in a 1999 Director's Decision, United States Army Corps of Engineers, DD-99-7, 49 NRC 299, 307-08 and in a letter from Chairman Dicus to Congressman Dingell dated July 29, 1999.

In its recent decision, In the Matter of International Uranium (USA) Corp., Docket No. 40-8681-MLA-4, slip op. at 6-7 (Feb. 10, 2000), the Commission mentioned its lack of regulatory authority over uranium-bearing material generated at facilities not licensed on or after 1978. However, the jurisdictional status of the material upon its arrival at the International Uranium (USA) Corporation (IUSA) was not important to the Commission's decision in the case and the Commission specifically declined to address the matter as part of its opinion. Rather, the Commission's inquiry focused on the actions taken by the licensee with regard to the material. The Commission found that once processing took place at the IUSA facility and uranium was recovered from the material, the resulting tailings constituted post-1978 § 11e.(2) byproduct material. In the end, since IUSA processed the material for its source material and rendered it post-1978 § 11e.(2) material subject to NRC authority, the jurisdictional status of the material upon arrival was not relevant to the Commission's final decision.

I trust this reply is responsive to your letter of March 7 and I thank you for your continuing interest in improving the regulatory process for uranium recovery.

Sincerely,

***/RA/***

Karen D. Cyr  
General Counsel

I trust this reply is responsive to your letter of March 7 and I thank you for your continuing interest in improving the regulatory process for uranium recovery.

Sincerely,

**/RA/**

Karen D. Cyr  
General Counsel

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\*see previous concurrence

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