ACTION

EDO Principal Correspondence Control

FROM:

DUE: 04/04/00

EDO CONTROL: G20000108
DOC DT: 02/24/00
FINAL REPLY:

Pamela Allister
Snake River Alliance

TO:

Travers, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

Kane, NMSS

DESC:

2.206 -- DISPOSAL OF RADIOACTIVE FUSRAP (FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM) WASTE IN IDAHO

ROUTING:

Travers
Paperiello
Miraglia
Norry
Blaha
Burns
Lohaus, SP
Cyr, OGC
Subbarathnam,NRR
Goldberg, OGC

DATE: 02/29/00

ASSIGNED TO: NMSS

CONTACT: Kane

SPECIAL INSTRUCTIONS OR REMARKS:

Snake River Alliance

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February 24, 2000

VIA FACSIMILE (301) 415-2700 AND U.S. MAIL

Dr. William D. Travers
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Disposal of Radioactive FUSRAP Waste in Idaho

Dear Dr. Travers:

On behalf of the members of the Snake River Alliance, I am writing about radioactive waste that is being disposed of at a Resource Conservation and Recovery Act ("RCRA") permitted hazardous waste disposal facility in my state. This facility is operated by Envirosafe Services of Idaho, Inc. ("Envirosafe"). Envirosafe has a contract with the U. S. Army Corps of Engineers ("USACE") to dispose of radioactive waste from the Formerly Utilized Sites Remedial Action Program ("FUSRAP") at its facility which is located near Grand View, Idaho.

The Snake River Alliance's concerns about this situation can be summarized as follows:

- The NRC is not regulating radioactive FUSRAP waste that is being disposed of in Idaho;
- The state of Idaho has no authority to regulate the disposal of this radioactive waste; and
- The state of Idaho does not have a radiation control program or qualified employees that have the knowledge or ability to enforce any worker health and safety or environmental protection program that is adopted by the disposer of this radioactive waste.

This letter discusses in more detail the basis for my concerns and requests action by the Nuclear Regulatory Commission ("NRC" or "Commission") to look into this matter and take action to ensure that worker health and safety, the public, and the environment are fully protected from radiation exposure as a result of the disposal of radioactive FUSRAP waste in Idaho.

The people of Idaho have become very concerned with the disposal of radioactive waste due to problems at the Department of Energy's Idaho National Environmental and Engineering

Laboratory ("INEEL") site which is located above the Snake River plain aquifer. Like the INEEL, Envirosafe is located near Idaho's Snake River, and any contamination of the Snake River or its aquifer by radioactive waste from Envirosafe would create a critical situation for the people of my state. Further, I understand that there is a situation underneath the Envirosafe site that is resulting in a rising groundwater table which makes the disposal of long-lived radioactive waste at that facility very troubling to me.

Apparently, the FUSRAP waste that is being disposed of at Envirosafe is Atomic Energy Act ("AEA") section 11e.(2) radioactive byproduct material. I understand that the NRC has taken the position that if this uranium mill tailings waste was generated before 1978, it is not regulated by the NRC, and it can be disposed in Envirosafe's landfill. However, if this very same material was generated after 1978 by an NRC licensee, it is regulated by the NRC, and it cannot go to Envirosafe but must be disposed in a licensed radioactive waste disposal facility.

The state of Idaho is not an "Agreement State" with the NRC, and it does not have its own radiological control program. The state defers to the NRC on matters relating to radiological health and safety. I had always understood that the NRC has responsibility for the regulation of non-Department of Energy radioactive waste in Idaho.

It seems clear to the Snake River Alliance in sections 81 and 84 of the Atomic Energy Act ("AEA") that Congress wanted the NRC to have authority for all 11e.(2) material regardless of when it was generated.

Further, section 274(c)(4) of the AEA seems to give the Commission the authority to regulate any byproduct material "as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission."

In addition, the NRC's regulations interpreting its Agreement State program make clear that states like Idaho that do not have Agreement State status are precluded from regulating byproduct material from the standpoint of radiological health and safety -- this responsibility rests completely with the NRC. See 10 CFR Part 8.4.

I have attached a copy of a letter from Katherine Kelly of Idaho's Division of Environmental Quality ("DEQ") to Idaho State Senator Robbi King. Ms. Kelly states in her letter that, "The NRC does not regulate the FUSRAP waste being accepted for disposal at the Envirosafe facility, and DEQ does not explicitly regulate the radioactive component of the

waste." Ms. Kelly goes on to state that, "The receipt and disposal of any waste at Envirosafe is, however, regulated by rigorous hazardous waste requirements and several additional permit conditions expressly directed toward the radioactive component of FUSRAP waste." In fact, however, radioactive FUSRAP waste is classified as "byproduct material" under the AEA, and I understand that both RCRA and Idaho Code Section 39-4403 specifically exclude byproduct material from their definitions of hazardous waste. Idaho only has authority to regulate the disposal of hazardous waste at Envirosafe and not radioactive byproduct (FUSRAP) waste.

As Ms. Kelly herself points out in her letter to Senator King,

> ...at present no Idaho rules are in place that specifically regulate Envirosafe's receipt and disposal of the radioactive component of FUSRAP wastes. Were any such rules or requirements considered for proposal by DEQ, we would have to closely consider our authority to adopt the rules given the stringency provisions the Legislature has included in the EPHA and HWMA. The stringency provisions limit DEQ's rulemaking authority to rules no broader in scope or more stringent than those of the federal government.

Essentially what Ms. Kelly is saying is that it is doubtful DEQ could even develop rules or regulations covering the disposal of radioactive waste at Envirosafe, because its authority in this regard is limited. Since DEQ's statutory authority does not provide for the regulation of the disposal of radioactive waste, DEQ has no authority to adopt rules and regulations in this regard.

Arguably, the only way Idaho could regulate radioactive waste is by Envirosafe's voluntary agreement to include provisions within its permit that would allow the state to regulate radioactive waste received at its facility. This seems to be the position taken by Ms. Kelly in her letter to Senator King. However, in looking at Envirosafe's permit, it is clear that there is no requirement within that permit or otherwise for Envirosafe to do anything. (See copy of Envirosafe Permit for FUSRAP Waste, attached.) While there are references to an Envirosafe FUSRAP Health and Safety Manual, there is no requirement that Envirosafe abide by that Manual. The allowable doses under the permit appear to be very high. There is no bioassay program for workers. There are no reporting requirements. There is no requirement that groundwater at the site be monitored for radionuclides.

Moreover, the state of Idaho does not have a radiation control program of any kind. Other than employees who work for Idaho's INEEL Oversight Program which is funded by the Department of Energy, the state of Idaho does not have qualified health physics employees

who have the ability to determine whether Envirosafe is complying with its own worker health and safety requirements. Thus, the state has no legal authority or practical ability to enforce any worker health and safety or environmental protection requirements.

If Idaho has no authority and the NRC is refusing to regulate this radioactive FUSRAP waste, who is looking out for the radiological health and safety of the people of Idaho? What is the NRC doing to ensure that workers, the public, and the environment in Idaho are protected from exposures to radiation as a result of the disposal of radioactive waste at this facility?

Please respond to this inquiry and provide answers to my questions at your earliest convenience. Further, please consider this a formal request for action pursuant to 10 CFR Part 2.206 to enforce the AEA and the NRC's regulations governing the disposal of all radioactive byproduct materials, including FUSRAP waste and similar radioactive byproduct uranium mill tailings generated prior to 1978.

Sincerely,

Pamela Allister

Pamela Allister
Executive Director

Enclosures

cc: Richard Meserve, Chairman, Nuclear Regulatory Commission w/enclosures
Governor Dirk Kempthorne w/enclosures
Senator Larry Craig w/enclosures
Senator Mike Crapo w/enclosures
Representative Mike Simpson w/enclosures
Representative Helen Chenoweth w/enclosures
Vice President Al Gore w/enclosures