



National Mining Association
Foundation For America's Future

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Associate General Counsel
Legal & Regulatory Affairs

February 2, 2000

The Honorable Richard Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Meserve:

I was pleased to have the chance to meet you at the November stakeholder meeting. I believe that meeting was very helpful in defining areas of stakeholder/agency interaction where improvements can be made. I would like to take the opportunity to follow up on a few of the statements I made at that meeting. One issue that I raised was the role of the Nuclear Regulatory Commission's (NRC) Office of General Counsel (OGC) in providing advice to the Commission. In particular, I raised concerns regarding the transparency of OGC decisions and analyses regarding issues the National Mining Association (NMA) raised in its White Paper on regulatory issues of concern to NMA's uranium recovery (UR) licensee members.

Partly in response to NMA's White Paper, NRC staff developed SECY papers 99-011, 99-012 and 99-013. In SECY 99-013, references are made to an OGC analysis regarding the jurisdiction of NRC over in situ leach wellfields. That document has yet to be made public. In addition, it is NMA's understanding that a new SECY paper (99-277) has been developed which references another OGC analyses regarding concurrent jurisdiction of non-agreement states with NRC over the nonradiological components of 11e.2 byproduct material. Between the release of the White Paper, the scoping meetings on the potential establishment of a Part 41, the briefing of the Commission on the White Paper, the issuance of the SECY papers, the briefing of the Commission on the SECY papers, the issues raised in the White Paper have received significant public airing. Yet I have been informed that the public may be denied access to those OGC papers on the basis of attorney-client privilege even though they may have a significant impact on any Commission decision.

Under these particular circumstances, the issue of openness versus attorney-client privilege needs to be carefully examined. Indeed, the legal and policy issues at the heart of this debate were raised in legal memoranda provided to the Commission by the Office of the Executive Legal Director (OELD) in 1980. The NMA White Paper's analyses directly addresses those 1980 "legal" memoranda. To refuse to make public for comment, OGC's response to

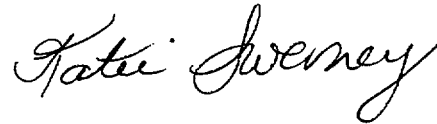
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NMA's legal and policy analyses of these issues effectively shuts down public debate of these matters. Without having access to the OGC responses, the public cannot even ascertain if OGC has directly addressed the correct issues. In the past, staff analyses have sometimes avoided fully addressing difficult issues which NMA believes represent flaws in prior analyses. For example, SECY paper 99-013 addresses dual regulation of ISL wellfields but does not address the questions raised by NMA's White Paper about NRC's reasons for asserting jurisdiction over the wellfields; it merely assumes the validity of the 1980 OELD and goes on to address other related issues as if NMA had never challenged the OELD opinion. If the bases for Commission decisions are not transparent, they may not be understood by the public and no true public participation will be achieved. Even though NMA is very anxious for the Commission to take action on the above-mentioned SECY paper/White Paper issues, NMA requests that the Commission release all relevant OGC analyses for comment before the Commission votes on these issues. Due to the fact that many key licensee actions and decisions are being delayed while awaiting the outcome of the Commission's decisions on these issues, NMA hopes that the Commission can move expediently to release the OGC analyses for comment and once comment is received develop a schedule for action on these key issues.

Thank you for your consideration of this request. Best wishes to you and your colleagues for a successful 2000.

Sincerely,

A handwritten signature in cursive script that reads "Katie Sweeney". The signature is written in dark ink and is positioned above the printed name.

Katie Sweeney