SEPTEMBER 11, 2000

ALL AGREEMENT AND NON-AGREEMENT STATES

PROGRAM MANAGEMENT INFORMATION: REQUEST FOR COMMENTS ON THE DRAFT RULEMAKING PLAN "DOMESTIC LICENSING OF URANIUM AND THORIUM RECOVERY FACILITIES" - 10 CFR PART 41 AND NOTIFICATION OF A COMMISSION DECISION ON CONCURRENT JURISDICTION OF NON-RADIOLOGICAL HAZARDS OF URANIUM MILL TAILINGS (STP-00-074)

The purpose of this letter is two-fold: (1) to request comments on the draft rulemaking plan, "Domestic Licensing of Uranium And Thorium Recovery Facilities" - 10 CFR Part 41, and (2) to inform you of a recent Commission decision on the Nuclear Regulatory Commission's (NRC) jurisdiction over the non-radiological hazards of uranium mill tailings.

A draft Rulemaking Plan entitled "Domestic Licensing of Uranium And Thorium Recovery Facilities," has been developed as a result of NRC staff and industry experience in using 10 CFR Part 40, "Domestic Licensing of Source Material" as well as 10 CFR Part 40, Appendix A, "Criteria Relating To the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content." The Commission has determined that it would be desirable to revise the existing 10 CFR Part 40 requirements to regulate in-situ leach (ISL) facilities, which have replaced conventional mills as the predominant producers of uranium in the nation. The Commission directed the staff to develop a draft Rulemaking Plan and to request comments on it.

Although the Commission has provided guidance to the staff on some matters reflected in the draft Rulemaking Plan, comments on the entirety of the Plan are welcome and will be carefully considered. Please note that the preferred option is to develop a new Part 41 dedicated to the regulation of uranium and thorium recovery facilities. Additional background information can be found in the SECY documents (available at http://www.nrc.gov/NRC/COMMISSION/SECYS/index1999.html#1999) and their corresponding Staff Requirements Memoranda (SRM) (available at http://www.nrc.gov/NRC/COMMISSION/SRM/index.html #1999) listed below.

SRM dated July 13, 2000 to SECY-99-011, Draft Rulemaking Plan: Domestic Licensing of Uranium and Thorium Recovery Facilities - Proposed New 10 CFR Part 41.

SRM dated July 26, 2000 to SECY-99-012, Use of Uranium Mill Tailings Impoundments for the Disposal of Waste Other than 11e.(2) Byproduct Material and Reviews of Applications to Process Material Other than Natural Uranium Ores.

SRM dated July 26, 2000 to SECY-99-013, Recommendations on Ways to Improve the Efficiency of NRC Regulation at in Situ Leach Uranium Recovery Facilities.

SRM dated August 11, 2000 to SECY-99-0277, Concurrent Jurisdiction of Non-radiological Hazards of Uranium Mill Tailings.

The draft Rulemaking Plan has been uploaded to the NRC's Technical Conference Forum (TCF) for public access and to the TCF subsystem where access is limited to Agreement States. Agreement States can access the draft Rulemaking Plan on the TCF at: http://techconf.llnl.gov/cgi-states/topics using the appropriate user name and password which was last updated via All Agreement States letter SP-99-027. Both Agreement and non-Agreement States can access the draft Rulemaking Plan at: http://techconf.llnl.gov/cgi-bin/topics without the need for an user name and password. We would appreciate your review and comments on the draft Rulemaking Plan no later than 45 days from the date of receipt of this letter.

Please provide any comments on the draft Rulemaking Plan directly to Mark Haisfield, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, T9-C24, Washington, DC 20555 at: 301-415-6196 or by Internet at: MFH@NRC.GOV. Comments may also be submitted via the TCF.

The second issue is the specific Commission direction forwarded in the SRM dated August 11, 2000, to SECY-99-0277, Concurrent Jurisdiction of Non-radiological Hazards of Uranium Mill Tailings. Specifically, the Commission determined that NRC has exclusive jurisdiction over both the radiological and non-radiological hazards associated with the processing, possession, and transfer of 11e.(2) byproduct material. This decision is based on the Commission's position that the Uranium Mill Tailings Radiation Control Act of 1978 gives the NRC the authority to preempt the authority of non-Agreement States or Agreement States without an 11e.(2) component in their Agreement State program, to regulate the non-radiological hazards associated with 11e.(2) byproduct material as well as the radiological hazards associated with this material. The SRM is available at http://www.nrc.gov/NRC/COMMISSION/SRM/1999-277srm.html and SECY-99-0277 is available at http://www.nrc.gov/NRC/COMMISSION/SECYS/index1999.html#1999.

If you have any questions regarding this correspondence, please contact me or the individual named below.

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This information request has been approved by OMB 3150-0029, expiration 04/30/01. The estimated burden per response to comply with this voluntary collection request is 4 hour(s). Forward any comments regarding the burden estimate to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC

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/RA/ (signed by Lloyd Bolling, Act DepDir for)
Frederick C. Combs, Deputy Director
Office of State and Tribal Programs

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