

FAX INFORMATION

**U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF STATE AND TRIBAL PROGRAMS**

STATE AND TRIBAL PROGRAMS FAX: (301) 415-3502

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SUBJECT: Please see attached comments from NMSS.

**IF RETRANSMISSION IS REQUIRED PLEASE CALL
OFFICE OF STATE AND TRIBAL PROGRAMS ON 301-415-3340/2326**

Criterion 4 states that there must be a demonstration that the material proposed for disposal is not subject to regulation by the U.S. Environmental Protection Agency under the Resource Conservation and Recovery Act (RCRA) and does not contain material regulated under other Federal statutes, such as the Toxic Substances Control Act (TSCA). WDOH's documentation never directly addresses this issue. Rather it states that the Washington Department of Ecology (WDOE) concurred with DMC's assessment that the material proposed for disposal is not a "dangerous waste" and provides a copy of WDOE's letter attesting to that. In order to satisfy criterion 4, WDOH must show a link between "dangerous waste" and material subject to regulation under RCRA, TSCA, or other Federal statutes; specifically it must show that material that is not "dangerous waste" does not fall under Federal statutes for hazardous or toxic wastes.

However, WDOH need not show that the proposed material is not subject to Federal regulation as a hazardous or toxic waste. In the Staff Requirements Memorandum (SRM) related to SECY-99-0012, the Commission directed the staff to allow more flexibility in disposal of non-11e.(2) byproduct material in mill tailings impoundments. Specifically, the Commission directed the staff to allow disposal of such material in mill tailings impoundments if: 1) there is adequate protection of public health, safety, and the environment, 2) the long-term custodian indicates its willingness to accept the site, and 3) necessary approvals of other affected regulators have been obtained.

Therefore, we conclude that WDOH either has to show that the proposed material is not subject to regulation under Federal statutes as a hazardous or toxic waste or if it is subject to regulation show that the three criteria identified in the SRM related to SECY-99-0012 have been met.