

**U.S. Department of Energy**

Grand Junction Office  
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Grand Junction, CO 81503

DIVISION OF RADIATION PROTECTION

APR 03 2001

**MAR 29 2001**

Mr. Gary Robertson  
Division of Radiation Protection  
Washington Department of Health  
P.O. Box 47827  
Olympia, Washington 98504-7827

Dear Mr. Robertson:

This letter is in response to several phone calls between the staffs of the State of Washington Department of Health and the U.S. Department of Energy (DOE) concerning the willingness of DOE to accept the transfer of land and radioactive materials at the Washington-licensed Dawn Mining Company (DMC)-owned 11e.(2) disposal cell in Ford, Washington (hereinafter called "DMC 11e.(2) disposal cell").

Consistent with its responsibilities under the Atomic Energy Act of 1954, as amended by the Uranium Mill Tailings Radiation Control Act of 1978, DOE is prepared to take title to the land and 11e.(2) byproduct material at licensed disposal cells, such as the DMC 11e.(2) disposal cell, at the time the 11e.(2) license is terminated, if the state in which the disposal site is located does not exercise its option to do so. The licensee would need to transfer the land and byproduct material without cost to the United States. The DOE's sole responsibilities would be to monitor and maintain the site and take any emergency measures necessary to protect public health and safety, under a license issued by the Nuclear Regulatory Commission (NRC).

You have requested DOE's concurrence, as a potential long-term custodian, in an amendment to the DMC license, which would allow disposal of certain non-11e.(2) byproduct material at the site. These materials are located at the DMC Midnite Mine on the Spokane Indian Reservation in the State of Washington. The additional materials will ultimately transfer to DOE, should DOE become the site's long-term custodian. You have indicated that the subject materials are chemically very similar to regulated 11e.(2) materials that are already allowed to be disposed at the DMC 11e.(2) disposal cell and will constitute less than one percent of the total radioactive materials authorized to be disposed at the site. You also indicated that subject materials will be disposed of in a lined and capped disposal cell in accordance with the State-equivalent of the Environmental Protection Agency's uranium mill tailings standards and NRC's regulations for uranium milling sites. Furthermore, the DOE has relied on the facts stated in a letter dated December 14, 2000, to John L. Erickson (State of Washington) from Paul H. Lohaus (NRC), that DMC's amendment application for disposal of non-11e.(2) material has, upon receipt of this letter, met all the criteria outlined in the NRC guidance document entitled *The Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11.e(2). Byproduct Material in Tailings Impoundments*. This document was published September 22, 1995, in the Federal Register.

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Based on your above representations, subject to the State's exercise of its option, DOE would not interpose an objection that the subject ore processing residues from the DMC Midnite Mine may be disposed at the DMC 11e.(2) disposal cell for which DOE may be the long-term custodian. We understand that no other non-11e.(2) materials will be disposed at the DMC 11e.(2) cell. Nothing in this letter is intended to waive any rights that the Department may have in the event that the Department takes possession of the DMC 11e.(2) disposal cell, and a remedy failure occurs.

If your staff has any questions, they should contact Cooper H. Wayman, Senior Legal Counsel, at 970/248-7620, or Steven R. Miller of our Office of General Counsel in Washington, D.C., at 202/586-2925.

Sincerely,



Donna Bergman-Tabbert  
Manager

cc:

S. Miller, DOE-HQ/FORS

C. Wayman, DOE-GJO

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FROM THE

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Please Deliver to:	<i>Kevin Flueh</i>
From:	<i>Gary Robertson</i>
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