

May 22, 2001

Mr. Eugene Forrer, Chief
Uranium Licensing Project
Division of Licensing, Registration, and Standards
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3189

Dear Mr. Forrer:

I am responding to your January 23, 2001 letter regarding a request from Conoco, Inc. (Conoco) to terminate the license for the Conquista Project site. Conoco has requested application of Texas provisions equivalent to Appendix A to 10 CFR 40 that allow a licensee to propose alternatives to the specific requirements of Appendix A. Specifically Conoco is requesting use of an alternative groundwater protection standard. Your January 23rd letter asks whether this method, proposed by the licensee, if properly supported by appropriate documentation, would be considered appropriate by the U.S. Nuclear Regulatory Commission (NRC) for license termination of the Conquista Project site.

As discussed below, it is not appropriate for the NRC to conduct a concurrent or independent review of Conoco's request to apply an alternative standard.

As a first step to pursue an alternative standard, Conoco would need to submit an application for license amendment to the Texas Bureau of Radiation Control (BRC) in accordance with the requirements under §289.260 in 25 Texas Administrative Code. The alternative proposal may take into account local or regional conditions including geology, topography, hydrology, and meteorology. Conoco would need to provide sufficient analysis to justify approval of the alternative. It would also appear reasonable that the application would include a rationale why the applicable regulatory requirements, such as alternative concentration limits (ACL's) in this case, are not being applied.

The standard for approval of alternatives is set forth in Texas regulations under §289.260(q)(32). The alternative must achieve a level of stabilization and containment of the site and a level of protection for the public health, safety and the environment from radiological and nonradiological hazards associated with the site, which is equivalent to, to the extent practicable, or more stringent than the level achieved by the requirements of Subsections (o) - (r) of §289.260 and standards promulgated by the Environmental Protection Agency in 40 CFR 192, Subparts D and E.

In addition, as stated in the last paragraph of Section 274o of the Atomic Energy Act of 1954, as amended, Agreement States may adopt alternatives if, after notice and opportunity for public hearing, the NRC determines that such alternatives provide an equivalent or greater level of

protection for public health, safety, and the environment. The licensee's analysis to justify approval of the alternative and the State's review and determination that the alternative meets the standard set forth in the paragraph above would be used by the NRC as a basis for making the determination. Thus, until the State completes its evaluation and proposes an alternative standard, the NRC would not begin the process to make the Section 274o determination.

Finally, to date, the NRC has not approved a licensee-proposed alternative for groundwater protection. The NRC has, however, approved several ACL groundwater standards for Title II mill tailings sties. Please note that discussions on the use of the alternative standard can also be found in my letter to Mr. Bruce Calder of the Texas BRC dated June 7, 2000.

If you have any questions or we may be of further assistance, please contact me or Kevin Hsueh at (301) 415-2598.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Eugene Forrer

May 22, 2001

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