

STATE OF COLORADO

Bill Owens, Governor
Jane E. Norton, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

AUG 31 2001

Frederick C. Combs, Deputy Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Your comments on Part 18, Licensing Requirements for Uranium and Thorium Processing

This letter is to seek additional information regarding your principal comment in the letter provided August 28, 2001. Please provide your response within twenty days, so that it is available prior to our hearing on Part 18 scheduled October 17, 2001 before the Colorado Board of Health.

The U.S. Nuclear Regulatory Commission (August 8, 2000) determined that Part 1 of Colorado's radiation regulations meets the compatibility categories established in Procedure SA-200. Part 1.4 defines byproduct material type 2 in a way congruent to 11e.(2) of the Atomic Energy Act. Fundamental to the NRC position on licensing mill tailings and to Colorado's Part 18 is recognition that any disposal of radioactive material at a byproduct material type 2 disposal site must not inhibit reclamation of the tailings impoundment or the ability of the U.S. government to take title to the impoundment as long-term custodian.

You state in your August 28th letter that the NRC does not have authority to license pre-UMTRCA wastes. Past policy of the Office of State and Tribal Programs has been to make no compatibility finding with respect to State control of radioactive material which is not within the authority of NRC, i.e. "...differences that result from the State regulations being made applicable to sources of radiation not covered by the Atomic Energy Act (e.g. x-rays, naturally-occurring and accelerator-produced radioactive materials)" [Procedure SA-201, *Review of State Regulations* (November 10, 1998), Appendix B, item I.B].

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Agreement States routinely use, and NRC has approved the use of, the term "radioactive material" in most parts of our regulations. It does not seem appropriate to require a state to adopt a duplicate section of regulation to merely substitute the term "radioactive material" for "byproduct material". It also does not seem appropriate that Colorado have to promulgate separate radiation safety regulations for disposition of like materials – uranium/thorium mill tailings generated before 1978 or after 1978.

In order for the Division to provide an explanation, within the Department and to the Board of Health, please provide the legal basis, especially since NRC has stated it has no authority over such materials, for NRC having requested that Colorado modify RH 18.1.3 so as to preclude cognizable radiation protection requirements from being applied to uranium- or thorium-related radioactive material generated before November 8, 1978.

Thanks in advance for a prompt response.

A handwritten signature in cursive script, appearing to read "W. Jacobi".

W. Jacobi, Manager
Radiation Services Program

WJ:klkw