



# State of Utah

## DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF RADIATION CONTROL

Michael O. Leavitt  
Governor

Dianne R. Nielson, Ph.D.  
Executive Director

William J. Sinclair  
Director

1 68 North 1950 West  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850  
(801) 536-4250  
(801) 533-4097 Fax  
(801) 536-4414 T.D.D.  
[www.deq.state.ut.us](http://www.deq.state.ut.us) Web

May 24, 2002

Sarah M. Fields  
P.O. Box 143  
Moab, UT 84532

Dear Ms. Fields:

This correspondence is in response to your electronic mail of May 20, 2002 and your letter received May 22, 2002. Several communications via electronic mail have followed to you which will be summarized in this letter. As indicated in return electronic mail, the state rulemaking process is administered by the Division of Administrative Rules (DAR) and all state agencies use their procedures when doing a rulemaking. The Radiation Control Board is given the responsibility under the Radiation Control Act (UCA 19-3) to promulgate rules. The process for rulemaking is that all rules come before the Radiation Control Board two times. The first time is to gain permission to file the rule with DAR and send the rule out for public comment. These activities are noted with each Board agenda and also noted in Board minutes. The specific rules that are referenced in the letter were approved to go to final comment by the Radiation Control Board on April 23, 2002. Rulemaking actions taken by the Board concerning uranium mill rules are found at [http://www.deq.state.ut.us/EQRAD/drc\\_brd.htm](http://www.deq.state.ut.us/EQRAD/drc_brd.htm) under the April 6 and April 23 minutes.

The purpose of these rulemakings are straightforward. In order for the Division to gain an amended Agreement with the Nuclear Regulatory Commission (NRC), rules to administer the uranium mill program must be promulgated prior to submission of a final application. The NRC will review the rules in detail to ensure equivalency with the current federal rules. Four of the proposed rules simply add a reference to the new R313-24, two more of the rules add in the uranium recovery categories, and R313-24 adopts the applicable parts of 10 CFR Part 40 by reference.

In terms of the issue of "better communication with the public" raised in the May 20, 2002 letter, there were certain issues raised which will be summarized below:

***Request: DRC develop a specific web page on the DEQ/DRC web site for the placement of information regarding the State's NRC Agreement State status.***

Information regarding uranium mills is found at: <http://www.deq.state.ut.us/EQRAD/millst.htm>  
This includes information related to the status of the amended Agreement which is found under "Stakeholder updates." The purpose of these updates is inform stakeholders interested in following

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the process of the Division of Radiation Control's efforts to achieve an amended Agreement with the Nuclear Regulatory Commission to regulate uranium mills and tailings within the State of Utah. There have been five updates issued to date starting in October 2001. As major milestones are met, the updates will be issued to Stakeholders and posted on the DRC website. Every website can be improved and the Division is open to suggestions as how information can be better relayed to interested parties via this medium.

***Request: The DRC place the complete text of the proposed rule on the web site (I would assume that the complete text includes the actual text of 10 CFR Part 40 sections, as appropriately adjusted, and the State regulations that are being incorporated into R313-24.***

The complete text of the seven proposed rules is now found on the DRC website at:

<http://www.eq.state.ut.us/EQRAD/RULES/proposed.htm>

The rulemaking will be thoroughly reviewed by the Nuclear Regulatory Commission to ensure compatibility with its current 10 CFR Part 40 rules. The State of Utah followed the NRC Guidance in determining which rules were required to be adopted. This is in addition to the public comment period on the rulemaking.

***Request: The DRC place supplementary information regarding the proposed rule and Agreement State status on the web site. Such information should include:***

### **10 CFR Part 40**

The text of 10 CFR Part 40 has been posted on the Uranium mills website page. A link has been established in paragraph 5 of the page under "10 CFR Part 40" and it can be directly accessed at:

<http://www.deq.state.ut.us/EQRAD/MILLS/ATLAS/10cfrpart40.pdf>

### **Utah Radiation Control Rules**

As mentioned previously in an electronic mail, the rules can be found at:

<http://www.eq.state.ut.us/EQRAD/rules.htm>

## **Utah Radiation Control Statutes**

As mentioned previous in an electronic mail, the Radiation Control Statutes can be found under the Rules Section of the website at:

*[http://www.le.state.ut.us/~code/TITLE19/19\\_03.htm](http://www.le.state.ut.us/~code/TITLE19/19_03.htm)*

## **42 U.S.C. Section 2021 (Cooperation with States)**

The text of 42 Section 2021 (Cooperation with States) has been posted on the Uranium mills website page. A link has been established in paragraph 6 of the page under "amend its current agreement" and it can be directly accessed at:

*<http://www.deq.state.ut.us/EQRAD/MILLS/ATLAS/42uscsec2021coop.pdf>*

## **Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978**

A link to UMTRCA has been established on the Uranium mill website page under paragraph 5 and can be directly accessed at:

*<http://www.antenna.nl/wise/uranium/ulus.html>*

## **Draft application - Amended Agreement for Uranium Recovery (November 19, 2001) and any revisions thereof/NRC responses to that application**

As mentioned previously in an electronic mail, the main reason there is no link to the draft application is because it is a "draft" In the NRC process, the State proposes a "draft application" for NRC to evaluate and comment on and before the State submits a "final application" that the NRC has to act upon in an approval role. The draft application is in 2 volumes and most of the application is not in an electronic format. The majority of the application consists of attachments to the main text. When the final application is completed and submitted to the NRC, the Division will consider providing the "text" portion of the application in electronic form on the website. NRC, at that point, may make the document accessible via electronic format also. If a copy of the draft application and/or comments by the NRC are desired at this point, these documents are publicly available but not in electronic format. To obtain copies, an information request form at *<http://www.deq.state.ut.us/EQRAD/forms/gramareq.pdf>* must be completed and submitted to the Division. The copying of such documents are subject to administrative fees imposed by the Utah legislature.

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**November 1999 DRC Scoping Document regarding DRC's proposal to amend its agreement with the NRC to regulate uranium mills and tailings:**

This is found at: <http://www.deq.state.ut.us/EQRAD/millst.htm> under "Scoping Process" and includes a summary of the Public Participation Document, Scoping Meeting Presentation, Scoping Meeting Schedule, and the DRC proposal.

Information relating to the DEQ Agreement State/Groundwater Authority task force, including the membership of the task force, notices of meeting of the task force, summaries of task force meetings, statements by task force including "Elements of a Utah Agreement State Program for Uranium Mill Regulation."

This is found at: <http://www.deq.state.ut.us/EQRAD/millst.htm>

Look under "DEQ Task Force" which includes all the information requested above.

**NRC Federal Register notices related to the Amended Agreement**

The NRC is obligated under its process for an Agreement or Amended Agreement to publish an intent to recommend approval or denial of an Agreement or Amended Agreement for four consecutive weeks in the Federal Register for public comment. Since a final application has not been submitted and NRC has not had the opportunity to make such determination, there are **no** Federal Register notices that have published to date. At the time of the publication of the Federal Register notice described above, the Division will consider linking the appropriate notice to its website through the "Stakeholder Updates" information notice process.

***Other pertinent information regarding the Amended Agreement application and approval process:***

**Suggested State Regulations, the Conference of Radiation Control Program Directors (CRCPD)**

The "Part U" Suggested State Regulations (SSRs) - Licensing Requirements for Uranium and Thorium Processing and Related Radioactive Material have not been finalized by CRCPD and are not available. The Division chose to adopt 10 CFR Part 40 by reference and not rely on the Part U SSR because the NRC has not had the opportunity to determine if the Part U SSRs are equivalent with the NRC rules. The status of SSRs is found at:

[http://www.crcpd.org/projects\\_regulation.asp](http://www.crcpd.org/projects_regulation.asp)

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***Request: The DRC send out a press release to the newspapers in southeastern Utah regarding the proposed rule (including information on how to obtain a copy of the proposed rule, references to the DRC web site, and other pertinent information.***

Sending out a press release to the newspapers in southeastern Utah is no guarantee that they will provide information concerning the proposed rule. Typically, the Division will pay for a legal advertisement in order to ensure publication of the information.

In lieu of a press release, the front page of the DRC website has been modified to indicate that the public comment period on the uranium mills and tailings rule is now open and provides a link to the proposed rules and other pertinent information concerning the rulemaking at

[http://www.eq.state.ut.us/EQRAD/drc\\_hmpg.htm](http://www.eq.state.ut.us/EQRAD/drc_hmpg.htm)

***Request: The DRC establish a link to their web site to NRC's Office of State and Tribal Programs web site.***

There was a previous link established under "Other Sites" on the Division website to the Nuclear Regulatory Commission to which you could access the Office of State and Tribal Programs website. The commentary on the Nuclear Regulatory Commission site has been modified such to link directly to the NRC homepage and directly to the Office of State and Tribal Programs. This can be directly accessed at:

<http://www.hsr.d.oem.gov/nrc/>

The link is now established under "Other Sites" where the Nuclear Regulatory Commission is discussed (paragraph 5).

***Request: The DRC extend the comment period for an additional 15-30 days due to the lack of information on the proposed rule, the extent of the proposed rule, and the importance of new regulations to the communities of southeastern Utah.***

The public comment period for the May 15, 2002 rulemaking, which includes 4 rules, ends on June 14, 2002. When the extension was requested (on May 20, 2002), there were 25 days remaining for review of the rules. The only rule of significance to review in this rulemaking batch is R313-24. There is an additional rulemaking that commenced on May 1, 2002 which includes 3 of the 7 proposed rules for uranium recovery regulation necessary for the State to assume primacy.

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The Division will agree to an extension of the public comment periods as follows:

For the May 1, 2002 rulemaking which includes changes to R313-17-2(1)(a), R313-22-33 (1)(e), R313-70-7(2)(b)(c)(d)(e)(f), an extension is granted until June 5, 2002.

For the May 15 rulemaking which includes changes to R313-15-1001 (1)(a), R313-22-39, R313-19-2(2) and the new R313-24, an extension is granted until June 28, 2002.

Legal advertisements announcing the rulemaking and extensions will be published in the Salt Lake Tribune, Deseret News, Moab Times Independent, and the Blue Mountain Panorama on or about May 29, 2002.

***Request: Further, Utah Code allows that an interested person, an interested association, or another state agency may request the agency to hold a hearing on a specific proposed rule. Section 63-46a-5 (1987) requires that a hearing be received "in writing not more than 15 days after the publication of the Proposed Rule. Therefore, as an interested person, I hereby request that DRC hold hearings in Moab and Blanding, Utah on the proposed rule. I also request that the DRC hold these hearing on or before June 17, 2002.***

The cited reference [Section 63-46a-5 (1987)] indicates in (1) that each agency **may** conduct (emphasis added) a public hearing. . . during the public comment period. (2) establishes the conditions under which the agency is required to hold a public hearing including:

(a) a public hearing is required by state or federal mandate

(b)

(i) another state agency, **ten** (emphasis added) interested parties, or an interested association having not fewer than ten members request a public hearing and

(ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule (the request was received by electronic mail on May 20, 2002, 5 days after the publication of the notice)

(3) The agency shall hold the hearing:

(a) before the rule becomes effective; and

(b) no less than seven days nor more than 30 days after the receipt of the request for hearing

The request submitted does not satisfy the requirements of Section 63-46a-5 (a)(i) which requires at least ten interested parties submit a hearing request.

With an extension of the public comment period, an adequate amount of time is provided to submit written comments to the Executive Secretary concerning this rulemaking. The written comments will have the same bearing as an appearance at a public hearing on the matter.

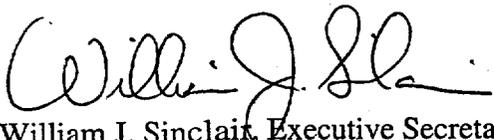
Additionally, there is opportunity provided to members of the public at each meeting of the Utah Radiation Control Board to raise concerns regarding a pending Board action. Another option for

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you or other interested parties, besides a public hearing on the rule, would be to attend the upcoming Radiation Control Board meetings where the rulemakings are being discussed. This would provide the opportunity to voice your concerns in a public meeting as requested.

If you have further questions, do not hesitate to contact me.

UTAH RADIATION CONTROL BOARD



William J. Sinclair, Executive Secretary

cc: Radiation Control Board members  
William Meier, NRC Region IV  
Richard Graham, EPA Region VIII  
David Cunningham, R.N., B.S.N., Health Officer/Director, Southeastern Utah District  
Health Department  
Dennis Sollenberger, NRC Office of State and Tribal Programs



State of Utah  
DIVISION OF RADIATION CONTROL  
DEPARTMENT OF ENVIRONMENTAL QUALITY

P.O. Box 144850  
Salt Lake City Utah 84114-4850

RETURN SERVICE REQUESTED



M SOLLENBERGER  
US NUCLEAR REGULATORY COMMISSION  
OFFICE OF STATE PROGRAMS  
MAIL STOP 3 D 23  
WASHINGTON DC

20555

