

# STATE OF COLORADO

## COLORADO DEPARTMENT OF HEALTH

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

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Roy Romer  
Governor

Patricia A. Nolan, MD, MPH  
Executive Director

January 21, 1994

Dr. Malcolm Knapp  
United States Nuclear Regulatory Agency  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

Dear Dr. Knapp:

Re: **Comments on Proposed Performance-Based License Conditions**

The State of Colorado has reviewed the performance-based license condition concept proposed in your letter of November 2, 1993. The idea put forth by the U.S. Nuclear Regulatory Commission (NRC) to reduce the number of license amendments is a sound one. However, the State of Colorado has some reservations about the performance-based license conditions proposed. Specifically, the State is concerned that the license condition proposed gives the licensee a great deal of discretion without NRC input. The State is troubled by the decisions on safety and environmental procedures being made by a committee composed solely of site personnel. Inspections would be difficult since the first item would be to establish what procedures are in effect. A situation could occur where no one would know the proper procedure. This approach requires the licensee to determine if a procedure meets license conditions. Clearly, the NRC does not want to abrogate this responsibility.

The State of Colorado proposes that the licenses be procedures based. The licensee would produce a procedures document that would be referenced in the license. The licensee could amend this document with NRC approval, without the need for a license amendment. The same process could be used for updating the amount of a financial surety bond for inflation or changes in unit costs. Under this scheme, the only time a license amendment would be needed for financial assurance purposes would be if the instrument changed. Both of these measures would streamline the licensing process and at the same time allow NRC to review important information.

If you have any questions or comments regarding this letter please contact Don Simpson at (303) 692-3066.

Sincerely,

Robert M. Quillin, Director  
Radiation Control Division

RMQ/msm

cf: State of Washington  
State of Texas  
State of Illinois

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PDR WASTE  
WM-11 PDR



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

DEC 21 1993

Kathleen M. Sisneros, Director  
Water and Waste Management Division  
State of New Mexico  
Environment Department  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, New Mexico 87502

Dear Ms. Sisneros:

As Chairman of the Transition Oversight Team (TOT) responsible for overseeing the closure of the Uranium Recovery Field Office (URFO), I am responding to your letter of November 18, 1993, to Ramon Hall, Director of URFO. In that letter, you expressed concern with the proposed performance-based license condition, which would allow licensees to make changes to their facilities under certain conditions without U.S. Nuclear Regulatory Commission approval. You further stated that some of the determinations licensees would need to make in implementing the condition are subjective and should not be left to industry to make. Based on this concern you recommended that the proposal, as it is currently written, should be withdrawn.

In developing the license condition, the staff ensured that the proposal was consistent with the regulations and licenses issued by NRC for other facilities including nuclear power plants, fuel cycle facilities, and the high-level waste repository. Overall, the performance based condition does not provide any more flexibility than that contained in the regulations and licenses for the facilities discussed above, and is therefore consistent with established agency policy. In addition, during a TOT meeting held with licensees and industry representatives on November 18, 1993, the NRC and licensee representatives indicated that nearly all of the instances where the condition would be used would relate to operational aspects of the facilities, and could not be applied to many aspects of the reclamation plan approved by NRC. Furthermore, because of the potentially significant cost impacts of having to rework major parts of the reclamations, the licensees emphasized that they would be reluctant to make anything other than very minor changes to their approved reclamation plans.

Also during the meeting of November 18, 1993, the staff emphasized that the burden of ensuring proper implementation of the condition was the responsibility of the licensees. It noted that the condition was structured such that licensees were required to submit an application for all license amendments unless they could demonstrate that the provisions specified in the license condition were satisfied. In addition, the staff stressed that the condition requires that a summary of all changes made under this condition be provided to NRC in an annual report. The staff believes that these summaries, coupled with information gained from inspections, would allow it to determine if a licensee had not properly implemented the condition, and was in violation of its license. If this were the case, the licensee would be required to document that the conditions had been corrected and what actions were taken to assure that the violation would not happen in the future. The licensee would also be subject to enforcement action by the NRC.

Enclosure

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Because the proposed performance-based license condition is consistent with established agency policy for other facilities, and because there are provisions in the condition that will allow NRC to review implementation of the condition, the staff believes that application of the proposed condition will not result in an adverse effect on the environment and public health and safety.

We appreciate your input and comments on this important issue. We would also welcome participation by you or a representative from your office, in this and other TOT efforts, including participation in future meetings.

Sincerely,

ORIGINAL COPY  
DATE: 12/21/93

Malcolm R. Knapp, Director  
Program Management, Policy Development  
and Analysis Staff  
Office of Nuclear Material Safety  
and Safeguards

Mr. Robert M. Quillin, Director  
 Radiation Control Division  
 Colorado Department of Health  
 4300 Cherry Creek Drive, South  
 Denver, Colorado 80222-1530

FEB 05 1994

Dear Mr. Quillin:

I am responding to your letter to me, dated January 21, 1994, in which you raised concerns with the U.S. Nuclear Regulatory Commission's proposed performance-based license condition. Your particular concern was that uranium recovery licensees would be provided a "great deal of discretion without NRC input." Similar concerns were recently raised by the State of New Mexico, and I have enclosed a copy of our response to it which you may find helpful as background information. As noted in that response, the process being outlined in the performance-based license condition is consistent with the program being implemented by NRC for other licensees, and it has several ways NRC can ensure that the condition is being properly implemented. Therefore, we believe that the approach being proposed for uranium recovery licensees will not abrogate the NRC's responsibilities.

With respect to your recommendation that the condition be procedures based, NRC is presently undertaking an effort to determine ways in which the regulatory burden for uranium recovery licensees can be reduced. As part of this process, NRC has received several suggestions on how to achieve this objective. The proposal contained in your letter may offer insight into additional ways this can be done. However, without a more detailed presentation of what such a condition would look like, and how it could be implemented in areas such as updating of sureties for inflation, we are unable to respond to your recommendation. Therefore, I encourage you to provide more specifics on the contents of your proposed condition, a detailed discussion of how it would be implemented, and several examples.

If you have any questions on the NRC's regulatory reduction effort, please feel free to contact the cognizant NRC manager, Mr. Joseph Holonich. Mr. Holonich can be reached at (301) 504-3439.

Sincerely,  
 ORIGINAL SIGNED BY

Malcolm R. Knapp, Director  
 Program Management, Policy Development  
 and Analysis Staff  
 Office of Nuclear Material Safety  
 and Safeguards

Enclosure: As stated  
 cc: Attached List

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Robert M. Quillin

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