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November 4, 2003

Mr. Paul H. Lohaus, Director  
Office of State and Tribal Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

RE: Utah Final Application, Amended Agreement for Uranium Recovery Regulation

Dear Mr. Lohaus:

On October 17, 2003, the Nuclear Regulatory Commission (NRC) responded to my April 15, 2003, e-mail and April 20, 2003, letter. On May 2, 2003, I had written a follow up to my April 20 letter, which I thought I had sent to the NRC, but apparently did not. Therefore, I am presenting that discussion and questions for your consideration.

On January 2, 2003, Michael O. Leavitt, the Governor of the State of Utah, proposed to amend an agreement between the State of Utah and Nuclear Regulatory Commission (NRC), pursuant to the Atomic Energy Act of 1954, as amended. See 42 U.S.C. § 2021. Under the amended agreement, the State of Utah would assume regulatory responsibility for byproduct material as defined under Section 11e.(2) of the Atomic Energy Act (AEA) (uranium and thorium recovery facilities and uranium and thorium mill tailings impoundments).

Governor Leavitt's letter to the NRC was the cover letter to an extensive, multi-volume document entitled "Final Application, Amended Agreement for Uranium Recovery Regulation," authored by the Utah Division of Radiation Control, Department of Environmental Quality, dated January 2003 (ML030280380). The document contains the "Utah Final Application for Uranium Mills and Mill Tailings" and numerous appendices in support of the Final Application.

The Final Application contains a Policy Statement (pages 2-4). The Policy Statement refers to and quotes from a policy statement entitled "Elements of a Utah Agreement State Program for Uranium Mill Regulation" (April 26, 2000) (Final Application, Appendix A). The quoted portion of the "Elements" paper states, in pertinent part:

The State recognizes that to remain viable at this time, uranium mills must be able to engage in activities other than milling conventional mined uranium ores such as processing alternate feed materials for the recovery of uranium alone or together with other minerals.

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The Final Application is vague regarding where the statutory and regulatory authority for that regulatory program is derived. Missing is an elucidation of the nature of the authority that will be relinquished by the NRC with respect the processing of alternate feed materials. Missing is a discussion of the applicable NRC and Environmental Protection Agency (EPA) regulations and programmatic Environmental Impact Statements that address the processing of alternate feed materials at licensed uranium mills.

## QUESTIONS

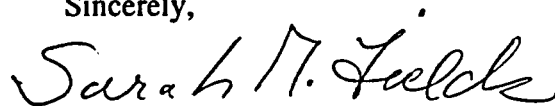
1. What exactly does the NRC staff contemplate as a properly authorized technical definition of the descriptive "alternate feed materials" or "processing of alternate feed materials," as utilized by the subject application, where reviewing and responding to that January 2003 Final Agreement State Application?
2. Where is the descriptive "alternate feed materials" or "processing of alternate feed materials" found in the Atomic Energy Act of 1954, as amended, or any other statute implemented by the NRC staff.
3. Under what statutorily authorized Office of State and Tribal Programs regulatory oversight program will the proposed regulation by the State of Utah of the processing of alternate feed materials occur? Where by statute is the NRC authorized to oversee State of Utah regulation of the processing of alternate feed materials?
4. What is the regulatory authority that will be relinquished by the NRC to the State of Utah that specifically authorizes the processing of alternate feed materials at licensed uranium recovery facilities?
5. Were, by federal statute, is the NRC actually authorized to specifically relinquish any claimed authority to regulate the processing of alternate feed materials?
6. When did the NRC and the (EPA) develop and issue programmatic Environmental Impact Statements (or other National Environmental Policy Act [NEPA] documents) that contemplated and addressed the impacts to the environment of the processing of alternate feed materials?
7. What NRC and EPA regulations have been issued in response to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTCA) (based upon programmatic environmental assessments, risk assessments, and other background studies) that contemplate the processing of alternate feed materials at licensed uranium recovery facilities?

Paul H. Lohaus  
November 4, 2003

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Thank you for your attention to these matters. If you have any questions, please feel free to contact me. I would hope for a prompt response to these questions.

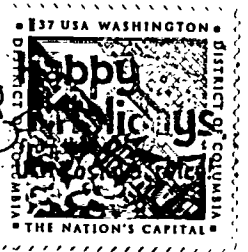
Sincerely,



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