

December 29, 2003

Mr. David Meisbach
Underground Injection Control Coordinator
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

SUBJECT: DEFERRAL OF ACTIVE REGULATION OF GROUND-WATER PROTECTION
AT *IN SITU* LEACH URANIUM EXTRACTION FACILITIES (TAC LA0010)

Dear Mr. Meisbach:

The purpose of this letter is to: (1) inform you of an initiative that was recently approved by the U.S. Nuclear Regulatory Commission (NRC) that would defer active regulation of ground-water protection at *in-situ* leach (ISL) uranium extraction facilities; and (2) request your agreement to begin the process.

In a Staff Requirements Memorandum (SRM) dated November 19, 2003, (Enclosure 1) the Commission approved the staff's recommendation to defer active regulation of ground-water reviews and inspections at ISLs to U.S. Environmental Protection Agency (EPA)-authorized non-Agreement States through the development of a Memorandum of Understanding (MOU) with the individual affected States. This initiative is discussed in more detail as Option 2(a) in the enclosed Commission paper (SECY-03-0186, dated October 29, 2003) (Enclosure 2).

As discussed in Enclosure 2, the NRC staff would work with each State to compare each State's ground-water protection program with that of the NRC. The comparison would examine the general review areas and staffing at the State, similar to an Integrated Material Performance Evaluation Program-type review performed for Agreement States. The NRC would enter into an MOU with that State, if the staff concluded that the State's ground-water protection program provides adequate protection of the public health and safety, and the environment, equivalent to the NRC program. Based on our experience in working with the State of Nebraska, we expect that the comparison would result in a finding of equivalence.

Once an agreement is in place, NRC would amend the ISL licenses, at the request of each licensee within the State's jurisdiction, to remove, as appropriate, the specific conditions pertaining to ground-water protection. Thereafter, the NRC would periodically document its review of underground injection control permits and State inspection reports, as well as State-identified program changes, to determine that the State continues to conduct an acceptable program. The NRC would continue to conduct licensing reviews and inspections for public and worker radiation safety at the affected ISL facilities. Only production well field ground-water protection aspects of NRC's licensing and inspection programs would be deferred to the State.

After an introductory meeting with you and your staff, we would issue a Regulatory Information Summary (RIS) for comment, outlining the MOU approach and the elements of an acceptable MOU, as a means of obtaining stakeholder and public input for deferring regulation to the

States. We would complete the MOU process, absent any comments that would cause the staff to reconsider this approach. Upon successfully completing the MOU with your State, we would then amend the affected ISL license. The amendment would be subject to an environmental review and a notice of opportunity for a hearing. Appendix F to Enclosure 2 provides a first draft of an MOU, which will serve as an outline for the RIS and as a starting point for discussions with your State.

To begin this process, we'd like to conduct a joint introductory video conference with the States of Nebraska and Wyoming in late January 2004. We've also invited EPA to participate in the video conference. I understand that my staff has already contacted your staff to arrange this conference.

If you have any questions, please contact Mr. John H. Lusher of my staff at (301) 415-7694 or by e-mail at jhl@nrc.gov.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. SRM dated November 19, 2003
2. SECY-03-0186

cc: Mario Salazar, EPA

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States. We would complete the MOU process, absent any comments that would cause the staff to reconsider this approach. Upon successfully completing the MOU with your State, we would then amend the affected ISL license. The amendment would be subject to an environmental review and a notice of opportunity for a hearing. Appendix F to Enclosure 2 provides a first draft of an MOU, which will serve as an outline for the RIS and as a starting point for discussions with your State.

Should you agree to begin this process, we'd like to conduct a joint introductory video conference with the States of Nebraska and Wyoming in late January 2004. We've also invited EPA to participate in the video conference. I understand that my staff has already contacted your staff to arrange this conference.

If you have any questions, please contact Mr. John H. Lusher of my staff at (301) 415-7694 or by e-mail at jhl@nrc.gov.

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Enclosures:

- 1. SRM dated November 19, 2003
- 2. SECY-03-0186

cc: Mario Salazar, EPA

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*see previous concurrence

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