

January 15, 2004

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

Dear Ms. Fields:

I am responding to your November 4, 2003 letter regarding Utah's Final Application for their amended agreement for 11e.(2) byproduct material. We have responded to your questions and these responses are presented in the enclosure to this letter.

I trust we have been responsive to your questions. If you have any questions on our responses, please contact me at phl@nrc.gov or Dennis Sollenberger at dms4@nrc.gov.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
As stated

Sarah Fields

January 15, 2004

Distribution:

DIR RF (3-249)

DCD (SP08)

RVirgilio

PDR (YES✓)

Response to Incoming Document: ML033170192

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML040170036.wpd

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP	STP:DD	OGC	STP:D	
NAME	DSollenberger:gd	JMPiccone	SATreby	PHLohaus	
DATE	01/14/04	01/15/04	01/15/04	01/15/04	

OFFICIAL RECORD COPY

Response to Sarah Fields Questions of November 4, 2003

Question 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?

Response: The terms "alternate feed material" and "ore" are not defined in the Commission's regulations:¹ however, the NRC guidance document, Regulatory Information Summary (RIS) 2000-23, "Recent Changes to Uranium Recovery Policy" (web address: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/2000/ri00023.html>) defines these terms in the context of the NRC's uranium recovery program. RIS 2000-23 defines "alternate feed material" as "material other than natural ore," while "ore" is defined as "any natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted in a licensed uranium or thorium mill." The Commission adopted the staff's definition of "ore" in CLI-03-15 (11/13/03) which was issued in response to the application of the Sequoyah Fuels Corporation for a materials license amendment.

On page four of Utah's revised program description for the final application submitted by letter dated July 18, 2003, Utah provides information indicating that it intends to follow the NRC guidance in RIS 2000-23 for review of and making a decision on requests for receipt of alternate feed materials by uranium mills. Utah stated that it will treat each application for alternate feed material as a major amendment and will follow the licensing procedures described in the Utah application. Utah's program is consistent with the NRC's program.

Question 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.

Response: The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) amended the Atomic Energy Act of 1954 (Act) by adding and defining the term "11e.(2) byproduct material" as "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." (emphasis added). The terms "ore" or "any ore" are not defined in UMTRCA or the Act. As stated in our response to Question 1 above, the Commission has adopted the staff's definition of "ore" which includes "alternate feed material" at licensed uranium mills.

¹The term "unrefined and unprocessed ore" is defined at 10 CFR 40.3 as "ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining." While this definition addresses unrefined/unprocessed ore, it does not distinguish between such ore and alternate feed material.

Question 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?

Response: Section 274(b) of the Act, as amended, provides the authority for NRC to enter into an Agreement with a State for several categories of material. One of these categories is 11e.(2) byproduct material. The proposed amendment to Utah's current Agreement is for the State to add authority for 11e.(2) byproduct material to its program. This authority allows Utah to regulate the facilities that generate 11e.(2) byproduct material, i.e., uranium mills where uranium extraction is the primary purpose for processing ore.

Section 274j provides the authority for NRC to periodically review the State's performance under the Agreement under Section 274b.

Question 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?

Response: The amendment to the Utah Agreement will allow Utah to regulate 11e.(2) byproduct material and the facilities that generate 11e.(2) byproduct material. If a material other than a natural ore meets the three-prong criteria set forth in RIS 2000-23 for it to be processed as an alternate feed material, this activity would fall under the proposed amendment to the Utah Agreement.

Question 5. Where, by federal statute, is the NRC actually authorized to specifically relinquish any claimed authority to regulate the processing of alternate feed materials?

Response: Section 274 of the Act, as amended, provides this authority. Section 274b lists 11e.(2) byproduct material as one of the categories of materials for which the States may enter into an Agreement with the Commission. As discussed in Response to Question 1 above, alternate feed material is an ore which when processed primarily for its source material content at a licensed uranium mill, produces 11e.(2) byproduct.

Question 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?

Response: The Generic Environmental Impact Statements (GEIS) on uranium milling and the disposal of the resulting 11e.(2) byproduct material were issued by NRC (NUREG-0706, Vol. 1, 2, & 3, 1980, "Final Generic Environmental Impact Statement on Uranium Milling") and EPA (EPA 520/1-83-008, Vol. 1 & 2, "Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR 192)") in the development of their respective

regulations for these materials. Alternate feed material is an ore that can be processed for its source material content. The final GEISs mentioned above, while not explicitly mentioning all ores, such as alternative feed material, analyze the potential generic impacts of processing any ore material. The impacts of processing alternate feed material at a specific facility must be addressed by the regulatory agency that approves the material for processing. NRC has issued site-specific environmental assessments evaluating the impacts of alternate feed material that NRC has approved. These environmental assessment comply with the requirements of 10 CFR Part 51.

Question 7. What NRC and EPA regulations have been issued in response to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (based upon programmatic environmental assessments, risk assessments, and other background studies) that contemplate the processing of alternate feed materials at licensed uranium recovery facilities?

Response: The NRC amended its regulations in 1980 to address the requirement in UMTRCA (10 CFR Part 40, specifically adding Appendix A). EPA issued new regulations in 1983 (40 CFR 192, Subparts D & E). The GEISs referenced in response to Question 6 above provided the support for these rulemakings. NRC conformed its regulations to those issued by EPA through subsequent rulemakings in 1985 and 1987. Because alternate feed is a type of ore, the processing of alternate feed material is within the scope of these regulations.