

April 28, 2004

Mr. Clifton W. Farrell
Senior Program Manager
Material Licensees
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, DC 20006-3708

SUBJECT: COMMENTS ON REGULATORY ISSUE SUMMARY 2004-02: DEFERRAL OF
ACTIVE REGULATION OF GROUND-WATER PROTECTION AT *IN-SITU*
LEACH URANIUM EXTRACTION FACILITIES

Dear Mr. Farrell:

I am responding to your letter dated March 23, 2004, that expressed support for the subject Regulatory Issue Summary (RIS). We appreciate your comments on this RIS.

Additionally, you commented that the U.S. Nuclear Regulatory Commission (NRC) should relinquish regulation of all *in-situ* well field operations. You stated that such operations are equivalent to the mining of ores in conventional open pit or underground operations which are not subject to NRC licensing. However, *in-situ* leach operations involve the in-place (i.e., *in-situ*) processing of ores to extract (i.e., recover) the uranium. Unlike conventional open pit or underground mining in which the ore is removed from the earth and the uranium is later extracted from the ore in a mill, the extraction of the uranium for *in-situ* leach processes occurs directly in the ore deposit. The NRC has jurisdiction and licensing authority over the milling of uranium (as defined in 10 CFR 40.4) unless, pursuant to section 274b. of the Atomic Energy Act Act of 1954, as amended (AEA), a state enters into an agreement with the NRC which provides for the discontinuance of the NRC's regulatory authority over 11e.(2) byproduct material. In the case of *in-situ* leach operations, either a state must assume regulatory authority regarding this activity by entering into a section 274b. agreement with the NRC, or a statutory change would be necessary. We are not convinced at this time that a statutory change would be a cost effective undertaking.

If you have any further questions concerning this matter, please contact Robert Nelson of my staff at (301) 415-7298 or by e-mail at ran@nrc.gov.

C. Farrell

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Again, I would like to thank you for your support of RIS 2004-02.

In accordance with 10 CFR 2.390 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/reading-rm/adams.html>.

Sincerely,

/RA/

Robert C. Pierson, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

April 28, 2004

Again, I would like to thank you for your support of RIS 2004-02.

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Sincerely,

/RA/

Robert C. Pierson, Director
 Division of Fuel Cycle Safety
 and Safeguards
 Office of Nuclear Material Safety
 and Safeguards

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DATE	4/14/04	4/14/04	4/21/04	4/15/04	4/28/04

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