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Texas Department of Health

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United States Nuclear Regulatory Commission
Office of State and Tribal Programs
ATTN: Dennis Sollenberger, Ph.D.
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Dear Dr. Sollenberger:

We appreciate you, Maria Schwartz and Mike Fliegel taking the time to discuss by conference call on May 13, 2004 certain issues pertaining to the disposal of byproduct type 2, that is, 11e(2), material. We wish to memorialize and confirm with this letter our understanding of those issues.

The first issue concerns the distinction between "disposal area" and "surface impoundment" as used in Title 10 of the Code of Federal Regulations Part 40 (10 CFR 40) Appendix A. Although these terms have different definitions, their use in the regulations implies that they are synonymous from a practical application. However, from our discussion we understand that NRC considers the distinction between the two terms to be applicable to the stage of operations at a uranium mill site or a byproduct type 2 disposal facility. That is, during the phase of an operation where byproduct type 2 material is being placed for ultimate disposal, the feature into which the material is placed is referred to as a surface impoundment. However, when the facility enters into closure phase where the facility must meet the requirements of Criterion 6 in 10 CFR 40 Appendix A, then the surface impoundment feature is referred to as a disposal area. Thus, the facility must meet the requirements of Criterion 5 when material is being placed into the disposal cell, and must subsequently meet the requirements of Criterion 6 when the facility is being closed.

The second issue involved the criteria applicable to a facility used only for the disposal of byproduct type 2 material. Since the facility is not involved with the recovery of source material, that is, it is not a uranium mill, and fluid or liquid waste products are not being generated for disposal, and the facility does not intend to receive fluid products for disposal the question was posed as to which of the criteria in 10 CFR Appendix A would be applicable for such a facility. From our discussion, it is our understanding that the NRC considers the requirements of Criterion 5 in 10 CFR 40 Appendix A applicable. Although a facility may be sited in an arid climatic region, and the licensee will not receive material containing fluid, the requirement for a liner as specified in Criterion 5 is still applicable. This was the standard which the NRC applied to Envirocare of Utah for their application for a license to dispose of 11e.(2) material.

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The third issue involved the requirements under Criterion 11 of 10 CFR 40 Appendix A concerning land ownership, specifically mineral rights. Following our discussions of this issue, it is our understanding that the NRC considers obtaining ownership of the mineral rights to be a requirement for licensure. If an applicant failed to secure both surface and subsurface (i.e., mineral rights) ownership of the site, the application would be denied.

The final issue concerned groundwater standards applicable to existing Title II tailings impoundments. NRC's experience is that the US Department of Energy will not take a contaminated site. Thus, the regulations pertaining to groundwater require the exhaustion of all efforts to comply with the groundwater standards before implementing institutional controls. Those efforts are as outlined in NUREG-1620, Rev. 1 and entail a thorough site characterization such that groundwater protection at the site is evaluated on the basis of compliance with either the standards of background concentrations, maximum concentration limits, or alternate concentration limits. The use of alternative standards and institutional controls would be used only after an unsuccessful alternate concentration limit application.

If we have misconstrued your position on any of these items, please let us know. Again, we thank you for your time and assistance on these issues.

Sincerely,

Ruth E. McBurney

Ruth E. McBurney, CHP, Director
Division of Licensing, Registration
and Standards
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