

# Greenberg Traurig

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**FOI/PA REQUEST**  
Case No.: 2007-0231  
Date Rec'd: 6-18-07  
Specialist: POC  
Related Case: \_\_\_\_\_

June 15, 2007

**VIA FACSIMILE (301) 415-5130 AND U.S. MAIL**

NRC FOIA/PA Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T5-F11  
Washington, D.C. 20555-0001

Re: Freedom of Information Request

Dear FOIA/PA Officer:

This is a request on behalf of Greenberg Traurig, LLP pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and NRC's implementing regulations at 10 C.F.R. Part 9. Please provide agency records regarding and relating to the following:

1. Consideration of properties as "vicinity properties" at or near the former Tuba City Uranium Mill near Tuba City, Arizona, including but not limited to, a historic landfill near Tuba City, Arizona located on both Hopi and Navajo Reservations, known as the Tuba City Landfill, a/k/a the Tuba City Open Dump, or a dump site immediately adjacent to the north-northwest of the former mill and on the north side of Highway 160, known as the Highway 160 Dump Site (collectively, the "Tuba City Properties") pursuant to the Uranium Mill Tailings Radiation Control Act ("UMTRCA"), 42 U.S.C. §§ 7912(a) & (e).
2. The policies, guidances, considerations, and procedures for determining whether to designate areas as "vicinity properties" pursuant to UMTRCA, 42 U.S.C. §§ 7912(a) & (e).
3. The subject matter of a letter dated April 2004 from Donna Bergman-Tabbert, Director, Land & Site Management, at the DOE Grand Junction, Colorado office to Joe Shirley, Jr., President, the Navajo Nation (copy attached for reference).
4. Investigation, inspection, or assessment of environmental conditions at the Tuba City Properties.

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BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DELAWARE  
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HOUSTON  
LAS VEGAS  
LOS ANGELES  
MIAMI  
MILAN\*  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY, CA  
ORLANDO  
PHILADELPHIA  
PHOENIX  
ROME\*  
SACRAMENTO  
SILICON VALLEY  
TALLAHASSEE  
TOKYO\*  
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WEST PALM BEACH  
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\* Stamp: All other Tokyo Office/Strategic Alliance

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5. Remediation, reclamation, decommissioning or dismantlement of the Tuba City Uranium Mill or the Tuba City Properties.
6. Residual radioactive materials at or near the Tuba City Properties.
7. Communications to or from the Navajo Nation or Hopi Tribe relating to designation of processing sites or "vicinity properties," or remediation efforts at or near Tuba City, Arizona, including but not limited to the Tuba City Properties.
8. Any efforts to encourage public participation relating to consideration of designation of "vicinity properties" at or near Tuba City, Arizona, including but not limited to the Tuba City Properties, as required by 42 U.S.C. § 7921.
9. Review and approval or non-approval of any requests for designation of processing sites or "vicinity properties" at or near Tuba City, Arizona, including but not limited to the Tuba City Properties, pursuant to UMTRCA, 42 U.S.C. §§ 7912(a) & (e).
10. DOE's remediation plan for processing sites and "vicinity properties" at or near Tuba City, Arizona, including but not limited to the Tuba City Properties.
11. "Cooperative Agreement" or other contracts entered during the period 1978 to present concerning the designation of processing sites or "vicinity properties" or remediation at or near Tuba City, Arizona, including but not limited to the Tuba City Properties, among any of the following: the Department of Energy, the Department of the Interior, the Bureau of Indian Affairs, the Navajo Nation, or the Hopi Tribe.
12. Private contractors who performed any site studies, surveys, or investigations or conducted sampling or testing at uranium mines, uranium processing sites, or uranium mill tailings disposal sites at or near Tuba City, Arizona, including but not limited to the Tuba City Properties, and who provided guidance or any information to DOE or NRC regarding such studies, surveys investigations, sampling or testing.
13. The generation, handling, management, disposal, storage, treatment or transport of solid or hazardous waste at or near Tuba City, Arizona, including but not limited to the Tuba City Properties.

If it is determined that any portion of the requested information is exempt from disclosure, it is requested that, in accordance with 5 U.S.C. § 552(b), all reasonably segregable portions of such document be produced. It is further requested that all documents or portions thereof for which an exemption is claimed be identified with particularity and with the reasons supporting the exemption. In the event that it is determined that no

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document responsive to an individual request exists, written confirmation of such fact is requested. If you think that it is necessary to withhold any documents, please send a list of the withheld documents covered by the request, a description of their contents, an explanation of why they are considered by you to be exempt and information regarding the available appellate procedures.

We expect NRC to respond to the above request within 20 working days (excepting Saturdays, Sundays, and legal public holidays) as stated in 10 C.F.R. § 9.25(a). We are authorizing initial expenses up to \$2,000 and request that you contact us to obtain additional authorization.

Please contact me if you have any questions regarding this request.

Respectfully submitted,

GREENBERG TRAURIG, LLP



Gregory R. Tan

Enclosure

44-2674 02 late

12587 184

T-685 8/10/07 1-612



U.S. Department of Energy  
2587 B<sup>1</sup>/<sub>2</sub> Road  
Grand Junction, CO 81503

STEVE BRITTON  
- ARLENE LUTHE  
- CASSANDRA BLOEDEL

APR 22 2004

RECEIVED  
APR 28 2004  
NAVAJO ENVIRONMENTAL  
PROTECTION AGENCY

Mr. Joe Shirley, Jr., President  
The Navajo Nation  
P.O. Box 9000  
Window Rock, AZ 86515

Subject: Tuba City Landfill

Reference: Your Letter Dated December 1, 2003, Alleging Illegal Dumping of Mixed Waste by Rare Metals Corporation of America, Tuba City, Arizona

Dear President Shirley:

The U.S. Department of Energy (DOE) would like to thank you for your letter dated December 1, 2003. We have discussed the situation with retired Atomic Energy Commission employees who routinely inspected the Tuba City mill and have researched information about this site. The DOE did not find any evidence that would support the allegations that Rare Metals Corporation disposed of contaminated equipment or uranium mill tailings at the Tuba City landfill. Rare Metals Corporation operated under a licensing agreement with the U.S. Nuclear Regulatory Commission and the State of Arizona, and contaminated equipment and residual radioactive materials were to be controlled in accordance with the licensing requirements.

The Uranium Mill Tailings Radiation Control Act (UMTRCA) was passed in 1978 and assigned DOE the responsibility for remediating residual radioactive material at 24 UMTRA Title I mill sites and surrounding properties. The Tuba City mill site was remediated under that program, and surrounding properties where residual radioactive materials were identified were cleaned up by the DOE. The Tuba City landfill was not identified as being a concern by the Navajo authorities actively working with the UMTRA program at that time; therefore, it was not surveyed nor considered for remediation. In 1998, Congress revoked the DOE's authority and responsibility for any further remediation of residual radioactive materials.

However, Congress did continue DOE's authority to remediate ground water at the 24 UMTRA Title I mill sites. DOE believes that the ground water contamination discussed in your letter is not from the former mill site but is from the Tuba City landfill or some other nearby source. Therefore, ground water at the Tuba City landfill would not qualify to be remediated under the existing UMTRA program.

Congress also directed DOE to keep the UMTRA Grand Junction, Colorado, disposal cell open to receive any UMTRCA materials that may be discovered after the UMTRA surface program was terminated. If you determine that the material in the landfill meets the definition of UMTRA materials allowed for disposal and you request us to do so, I will discuss with Mesa County officials and regulators whether the Grand Junction disposal cell can be made available

Mr. Joe Shirley

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to the Navajo Nation for disposal of such materials that may be removed from the Tuba City landfill. All waste would need to meet existing disposal criteria. For example, in your letter, it was mentioned that some of the wastes are medical waste, which does not meet criteria and cannot be accepted at the repository.

The DOE is willing to meet with representatives of the Navajo Nation to discuss the current situation at the Tuba City landfill. However, in a letter dated June 19, 2001, and signed by Donald Sutherland, Acting Chief of the Environmental and Cultural Resources Management Division, the U.S. Department of Interior, Bureau of Indian Affairs (BIA), stated that the BIA intended to proceed with the closure of the Tuba City landfill under appropriate federal law. It appears to DOE that BIA has accepted responsibility for closure of the Tuba City landfill, and any such meeting should include the BIA.

If you have any questions concerning this matter, please contact Mr. Art Kleinrath of my staff at 970/248-6037 or give me a call at 970/248-6001.

Sincerely,



Donna Bergman-Talbert  
Director, Land & Site Management

cc:

N. Honi, Hopi Tribe  
W. Taylor, Hopi Tribal Chairman  
R. Sakiastewa, Jr., Hopi Tribe  
S. Etsitty, Navajo Nation EPA  
M. Romhorse, Navajo Nation  
D. Sutherland, BIA  
S. Grey, DOE-HQ  
R. Bush, LM-50  
M. Ghate, LM-5  
C. Carpenter, Stoller  
TUB200.02B (D. Roberts)

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