

Betty Garrett - Re: Request for Clarification on NRC Jurisdiction

40-9070

From: Ron Linton
To: abqfitch@swcp.com
Date: 07/10/2007 9:29 AM
Subject: Re: Request for Clarification on NRC Jurisdiction
CC: Bill VonTill; Dennis Sollenberger; Joe Lister; John Hull; William Rautzen

Stan:

Doing well on this end, thanks. The direction NRC gave to Joe Lister and RGRC in meetings in April and May was based on the belief, at the time, that New Mexico was not an Agreement State for source material licensing or 11(e)2 byproduct material licensing. I also didn't realize RGRC had an active permit for the IX plant that was separate from the former New Mexico mill license that was never used and has since expired. After lengthy discussion with you last week over the ion exchange plant and licensing issues, it became clear that RGRC currently had a license for the IX plant from the state. I indicated you needed to discuss the current license and jurisdictional issues with New Mexico. I still believe this to be the case. New Mexico will have to make the decision whether the IX plant may resume operation under its New Mexico license. I will forward your e-mail to our legal counsel and state agreements for their input. However, RGRC's legal counsel should also be researching this issue so that RGRC has a legal position and can make a legal argument as to jurisdiction. Call me if you have questions.

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>>> <abqfitch@swcp.com> 07/09/2007 10:00 PM >>>
 To: Ron Linton, NRC

Ron,

Good morning (or afternoon). I hope you are doing well.

Joe Lister of Rio Grande Resources Corporation (RGRC) has asked me to summarize the content and conclusions of my talk with you by telephone on July 3rd. In so doing, he wishes to clarify the lines of NRC's jurisdiction possibly affecting the Mt. Taylor Mine. Therefore, please note the following bulleted highpoints.

. In 1979, Gulf Mineral Resources applied for and received a uranium (source material) license from the state of New Mexico to operate an ion exchange plant as part of remediating mine water (of a number of constituents in addition to uranium) prior to discharge to the environment. That license, having never been terminated, remains in effect today in the name of RGRC following acquisition from Gulf Mineral Resources (and Chevron Resources).

- . New Mexico became an Agreement State in June 1974. The agreement is administered by the Radiation Control Bureau of the New Mexico Environment Department. The bureau issued the IX plant license under its agreement with NRC. The license remains active under the jurisdiction of the bureau.
- . In 1983, New Mexico returned the uranium milling portion of its agreement to NRC, but maintains jurisdiction over the remaining portion of its source material program.
- . Because the RGRC IX plant does not extract uranium from ore (nor generate 11.e(2) material), it doesn't meet the definition of a uranium mill. Hence, the plant is not subject to NRC's uranium recovery jurisdiction and the corresponding requirements of 10CFR40. Instead, the IX plant license remains with New Mexico and the provisions of the NRC agreement pertaining to routine source material regulation.

Mr. Lister, and RGRC thereby, are requesting formal confirmation from NRC that indeed the IX plant may resume operation under its New Mexico license. It appears that confusion resides with your direction to Mr. Lister that RGRC must obtain an NRC license to resume operation. (To do so, RGRC would need to terminate its New Mexico license to obtain an NRC license, in apparent violation of New Mexico's jurisdiction authorized under the agreement.)

Thank you in advance for your assistance and timely response.

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