



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
URANIUM RECOVERY FIELD OFFICE
BOX 25325
DENVER, COLORADO 80225

AUG 12 1985

URFO:HAP
URP WM-28

MEMORANDUM FOR: R. Dale Smith, Director
Uranium Recovery Field Office

FROM: Harry J. Pettengill, Chief
Licensing Branch 2
Uranium Recovery Field Office, RIV

SUBJECT: MEETING WITH NMEID AND EPA ON THE USE OF SUPERFUND
AUTHORITY TO DECOMMISSION AND RECLAIM UNC CHURCHROCK
NEW MEXICO URANIUM MILL

On June 25, 1985, I met with representatives of the State of New Mexico and the U.S. Environmental Protection Agency to discuss the status of EPA's ongoing review of the ground water contamination problem at the UNC Churchrock mill. The EPA study is being funded under the authorities provided by the Superfund Act. The list of attendees at this meeting are attached to this memorandum. The three attendees representing the Environmental Protection Agency were Mr. Larry Wright who has the overall responsibility for directing Superfund activities in all of Region 6. Accompanying him was James L. Turner, Regional Counsel for Region 6 and Steven D. Phillips who is the Project Manager for all Superfund sites in the State of New Mexico. Mr. Phillips indicated that EPA has completed all the preliminary field work required for a feasibility study on the ground water situation at the Churchrock site. He stated that the study would be finalized by September or October of 1985.

The meeting participants discussed the general approach EPA would use to determine the appropriate mitigation of the ground water problems at this site. The EPA staff indicated that upon completion of its ground water feasibility study they would publish their selected alternative for comment for a period of three to four weeks. During the comment period it was expected that the State of New Mexico would offer its comments. At the end of the comment period, the owner-operator (UNC) would be given the final opportunity to carry out the selected alternative determined by EPA. If the owner-operator failed to act responsibly then EPA indicated that under a line of enforcement action it would again enter the site

Information in this record was deleted in
accordance with the Freedom of Information Act.
Exemptions 6
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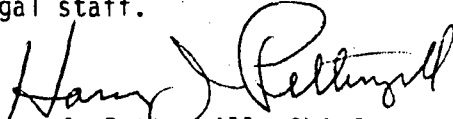
with selected EPA contractors and carry out the necessary mitigative actions. EPA staff stated that under federal statutes they could collect up to triple damages from the owner-operator upon completion of the entire project.

I inquired what specific standards EPA staff deemed necessary to evaluate its mitigative actions against. The EPA staff responded that they had to look at all applicable environmental standards including RCRA, CERCLA and 40 CFR 192. After some discussion between the meeting attendees regarding the differences between recent modifications to RCRA and those requirements promulgated by reference into 40 CFR 192, the EPA representatives offered the opinion that they may be able to modify their procedures in such a manner that they would be able to apply only 40 CFR 192 to uranium milling sites and would not be required to evaluate it against other aspects of existing RCRA regulations. There was also some general discussion regarding the ownership of the site and provisions for long term maintenance and monitoring. The EPA staff stated that under the normal requirements of Superfund (CERCLA) it was expected the owner-operator would maintain the site and provide long-term monitoring. The representatives of the NRC and the State of New Mexico indicated this was not consistent with the requirements under UMTRCA which requires that the title to the land and the byproduct materials disposed thereupon be transferred to the State at its option or the Federal government if that land was previously private land. The EPA staff offered the opinion that under certain circumstances where a State had taken primacy for Superfund activities it can take over that facility for long term maintenance and monitoring under Superfund. The consensus by the attendees was that it appeared that there was some conflict between the ownership requirements of UMTRCA and those required under the Superfund Act. EPA's counsel indicated that he would look into this matter at some depth and get back to the impacted agencies.

The State of New Mexico staff indicated to the EPA representatives that New Mexico desired that EPA expand the scope of study at the Churchrock site and consider the stabilization of the pile and the entire decommissioning and reclamation of the processing facility also under the Superfund Act. The EPA representatives felt that it was warranted and authorized under Superfund to carry out long term stabilization of all hazardous wastes at this site and agreed to expand the study. The State of New Mexico staff also asked the EPA representatives to look into the possibility of declaring the Anaconda Blue Water facility as a Superfund site in addition to the Churchrock Mill and the Homestake Mill already on the national priority list. New Mexico staff indicated their intention to potentially seek the concurrence of EPA that all the uranium

processing sites in the State of New Mexico be added to the Superfund list.

My observations of this meeting is that it brings to the forefront some very potentially conflicting situations between how the NRC is expected to carry out the termination and reclamation of Title II uranium mill as compared to requirements under the Superfund Act. I think we need to have the NRC legal staff look into the specific aspects of CERCLA and UMTRCA to establish clearly what those conflicts may be. The issue of long-term ownership and maintenance and monitoring, mentioned earlier in this memorandum, is clearly one point of contention. Additionally, I have identified a difference of approach used by EPA for listing uranium mills under CERCLA in that EPA is currently listing Agreement State sites and yet has declined from listing any Title II uranium mills that are currently under Federal (NRC) control. This is discussed in a statement EPA made in the Federal Register on September 8, 1983 (48 FR 40658) in which EPA stated the following: "EPA has also chosen not to list releases of source byproduct and special nuclear materials from any facility with a current license issued by the Nuclear Regulatory Commission, on the grounds that the NRC has full authority to require cleanup and releases from such facilities." Since under 10 CFR Part 150 the NRC is required to concur in the termination of any Agreement State license for a uranium mill in order to assure that all Title II facilities are reclaimed in accordance with federal requirements, then this also opens up the possibility that an Agreement State facility being cleaned up under Superfund may not be accomplished in such a manner that NRC would concur on that action or the termination of the license. Also, there is no clear procedure within CERCLA, to my knowledge, that would require the EPA (Superfund) to get prior NRC concurrence on any clean-up action prior to initiating that clean-up. I recommend that each of these issues be explored in depth by our legal staff.



Harry J. Pettengill, Chief
Licensing Branch 2
Uranium Recovery Field Office, RIV

Attachment: As stated

MEETING IN SANTA FE
NMEID, NRC, EPA

6/25/85

Steve Phillips EPA
Rich Raymond: EID
Felix B. Miera, Jr. EID
HARRY PETTINGILL, NRC
Pete J Garcia Jr., NRC
Terry Morgan, EID Rad. Protec. Bur
Ken Horgis, EID Rad. Prot. Bur
JIM TURNER, ORE EPA Dallas
Larry Wright, Superfund, Region 6

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