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<to> Young, Robert </to>
<from> Fonner, Robert </from>
<subject> UMTRCA Title I Uranium Mill Tailings </subject>

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TO: Richard Young

FROM: Robert L. Fonner

SUBJECT: (UMTRCA Title I Uranium Mill Tailings)

PAGES: 005

Dear Mr. Young:

I apologize for not responding sooner to your letter of March 6, 1987, asking for an opinion on whether deliberately commingled Title I and Title II tailings would have to be finally stabilized before the termination date for the DOE Title I program. I am enclosing for your information a letter recently sent to Senator Simpson by Chairman Zech, regarding a similar situation in Wyoming, that outlines the present thinking in the NRC on the question you raise.

There are two matters referred to in the Chairman's letter that bear upon your inquiry. The last paragraph on the first page notes the NRC view that DOE remains responsible for completion of the remedial action for Title I tailings regardless of final disposal site selected. Numbered paragraph 2 on page two of the letter calls attention to the fact that the NRC is required to issue a license to DOE for possession and caretaking of the Title I tailings by the end of the authorized Title I program. Because the NRC license is to be issued only after certification of completion and NRC concurrence therein (see UMTRCA Sec. 104(f), completion of stabilization before the Title I program termination date is clearly implied.

As you probably know I have discussed these matters on an informal basis with Dr. Margo Keele of the New Mexico EID. If you have any further questions you may call me at (301) 492-8692.

Sincerely yours,

Robert L. Fonner

Deputy Assistant General Counsel

Division of Rulemaking and Fuel Cycle

Office of the General Counsel

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Attachment 1 to DOC-NO: ELD-101A

ELD-101

Attachment 1

March 23, 1987

The Honorable Alan K. Simpson

Subcommittee on Nuclear Regulation

Committee on the Environment and Public Works

United States Senate

Washington, DC 20510

Dear Senator Simpson:

Thank you for your letter of February 25, 1987 regarding the Susquehanna inactive uranium mill tailings site near Riverton, Wyoming. I assure you that the Commission realizes the importance of providing prompt remedial action for the inactive sites in Wyoming and throughout the country.

In particular, the Commission supports the efforts of the Department of Energy (DOE) in fully considering the relocation of the Susquehanna tailings to an active site now under license to the Nuclear Regulatory Commission. This approach has several important advantages. The present tailings site would become free for other use, the tailings would be removed from Riverton, thereby eliminating future contamination there, and the number of final disposal sites requiring long-term oversight would be reduced.

One candidate site for disposal of the Susquehanna tailings is the American Nuclear Corporation (ANC) facility in the Gas Hills area of Wyoming. The NPC staff has reviewed and approved a license amendment request which authorizes ANC to receive all of the estimated 1.5 million cubic yards of residual radioactive material now at the Susquehanna site. This amendment obligates ANC to provide final stabilization for the transferred Susquehanna material (and any commingled ANC byproduct material) at the ANC site in accordance with ANC's reclamation plan. This reclamation plan, while not complete, is consistent with all applicable federal standards for stabilization of the Susquehanna and ANC materials.

DOE is responsible for completion of remedial action for the Susquehanna material regardless of the final disposal site selected. DOE may elect to rely on an active site licensee in that regard, but would remain responsible for completion of remedial action if the licensee fails to perform. We would expect the DOE to acknowledge its ultimate responsibility in any remedial action plan providing for relocation of inactive site material to an active site.

Also, there are two other issues which need to be resolved before relocation to an active site can be implemented. These stem from specific provisions of the Uranium Mill Tailings Radiation Control Act (UMTRCA). They are:

1. Under Title I of the UMTRAC the State must acquire the final disposal site prior to relocation of the Susquehanna material, unless it is already controlled by DOE or made available for that purpose by the Secretary of the Interior.
2. Also under Title I, the NRC is required to issue a license to the DOE for possession and caretaking of the Susquehanna material by the end of the authorized remedial action program (this date is currently March, 1990, but DOE is seeking an extension to September, 1993). There is uncertainty that the Susquehanna remedial action, and the termination of the existing ANC license, can be accomplished in this time.

The Commission believes that through continued interaction with DOE and the State of Wyoming, resolutions to these problems can be found which permit the relocation approach to be adopted and carried out to completion.

Sincerely,

Lando W. Zech, Jr.

Attachment 2 to DOC-NO: ELD-101A

ELD-101

Attachment 2

March 6, 1987

Robert Fonner, Esq.

Office of General Counsel

U. S. Nuclear Regulatory Commission

Washington, D.C. 20555

Dear Mr. Fonner:

Pursuant to our telephone conversation yesterday, I am hereby requesting that you provide the State of New Mexico with a written expression of Nuclear Regulatory Commission's (NRC's) legal position on the question whether federal law requires that, in the event the Title I tailings from the Ambrosia Lake site were to be removed to and commingled with the Title II tailings at the nearby Quivira (Kerr-McGee) facility, the commingled tailings would have to be finally stabilized on or before the Congressional deadline for Department of Energy (DOE) to complete its remediation duties under Title I (which DOE has informed us is no later than 1993).

By way of background, Quivira has recently expressed an active interest in receiving the Title I tailings for deposit directly upon Pond #1 of Quivira's tailings facility. At a meeting between Quivira, DOE, and Environmental Improvement Division (EID) on March 2, 1987, Quivira made clear that its proposal to accept the Title I tailings at Quivira's 'active' Title II facility was premised upon the assumption that the resultant commingled tailings at Pond #1 would not have to be finally stabilized by 1993, a date which would not allow Quivira to perform the kind of

Careful, orderly stabilization actions which Quivira deems necessary for the proper remediation of this extremely large tailings pile. Quivira further expressed the desire that a legal position be given by NRC, one way or the other, as quickly as possible because Quivira is planning to commence major earth-moving activities at Pond #1 as soon as weather permits, and these planned activities would be incompatible with the so-called 'Quivira Option' (of removing the Ambrosia Lake tailings to the Quivira facility, as an alternative to stabilization in place at the Ambrosia Lake site). The State and DOE are equally desirous of obtaining a quick statement of NRC's legal position as to a 1993 deadline for remediation of the commingled tailings which would result from the 'Quivira Option,' since a decision on whether the 'Quivira Option' really is a viable alternative to stabilization in place needs to be made very soon, if the bidding and construction schedule presently contemplated by DOE is not to be delayed substantially while we evaluate the two alternatives.

I might add that all three parties at the March 2 meeting expressed their willingness to accept NRC's legal position on what may or may not be done with respect to the remediation of Title I tailings at the NRC-licensed Title II Quivira facility. With that comment, we all eagerly await your statement of NRC's position on the question whether the Title I deadline for DOE remediation of the Ambrosia Lake site is a limiting factor with respect to remediation of the proposed commingled tailings which would result at the 'active' Quivira facility, if the Quivira Option' were implemented.

Sincerely,

Richard Young

RY/mp

cc. John Arthur, DOE

Hal Whitacre, Quivira Mining Co.

Michael Brown, EID