

40-8914

United States of America
Nuclear Regulatory Commission

Nunzio J. Palladino, Chairman
Thomas M. Roberts
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SERVED MAY 23 1986

In the Matter of the Governor)
of New Mexico's request to)
return to the United States the)
New Mexico program for the)
licensing of extraction or)
concentration of source)
material from source material)
ore and the resulting byproduct)
material)

ORDER
CLI-86-10

Pursuant to Section 274j(1) of the Atomic Energy Act of 1954, as amended, the Commission grants the request of the Governor of New Mexico for the Nuclear Regulatory Commission to accept the return of authority over the licensing and regulation in New Mexico of the extraction and concentration of source material from source material ore and the management and disposal of the resulting byproduct material as defined in Section 11e(2) of the Act.* The Commission finds that this action is required in the interest of the public health and safety.

* By letter dated May 8, 1986, a New Mexico lawyer, Michael S. Yesley, provided to the Chairman and requested that he circulate to other Commissioners an unsigned memorandum that Mr. Yesley said outlined the reasons why the NRC should afford a hearing on the Commission's action in response to Governor Anaya's request. Mr. Yesley's letter does not appear to constitute a hearing request, but the Commission believes in any event that no hearing is required when the Commission reasserts its regulatory authority in an Agreement State at the request of the Governor of that State.

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New Mexico is an Agreement State, but its Agreement does not include a needed amendment to cover the continued regulation by the State of the byproduct material (as defined in Section 11e(2) of the Act) produced by the extraction or concentration of source material from source material ore. For this and other reasons, the Governor of the State has advised the Commission that the State is no longer in a position to administer that portion of its Agreement State program and has requested its return to Commission jurisdiction. Under current Federal law, the extraction of source material from source material ore and the management and disposal of the resultant byproduct material cannot be left unregulated. Accordingly, the Commission finds it necessary to accept the return of that portion of the New Mexico program. Since the State will continue to license and regulate source material for other uses, no revision is needed in the present text of the New Mexico Agreement. It is also pertinent to note that the returned portion of the program does not remove from the State any authority with respect to the mining of source material ore. The Nuclear Regulatory Commission does not regulate the mining of source material ore.

The Commission staff has reviewed the files of the New Mexico Environmental Improvement Division and has identified all relevant licensing documents for transfer to the Commission. In

order to aid in a smooth transition, however, the Commission deems it essential to maintain continuity in the the licensing and regulatory obligations of the New Mexico licensees whose dockets are being transferred to the Commission. Such continuity may be assured by keeping in effect on an interim basis all New Mexico licenses as currently issued, until such time as the licenses are modified to meet Federal standards for the processing of source material ore and the management and disposal of the resulting byproduct material.

Therefore, the Commission hereby orders that all New Mexico issued licenses, license amendments, outstanding orders (if any), or other documents establishing obligations for specific licensees that are transferred to the Commission shall remain in full force and effect as if issued by the Commission. The Commission staff will review all transferred licensing documents and see to their revision as necessary to meet applicable Federal standards.



For the Commission

Samuel J. Chilk
Samuel J. Chilk
Secretary of the Commission

Dated at Washington, D.C.
this 23^d day of May, 1986