

From: Jarvis, James [James.Jarvis@dphe.state.co.us]
Sent: Thursday, April 19, 2012 6:12 PM
To: Schneider, Kathleen
Cc: Tarlton, Steve
Subject: REGULATORY QUESTIONS REGARDING OCTOBER 13, 2011 LETTER

To: Kathleen Schneider
Sr. Project Manager
State Regulation Review Coordinator
USNRC
Division of Materials Safety and State Agreements (MSSA)
Agreements State Program Branch (ASPB)

Ms. Schneider,

On behalf of the Colorado Agreement State Program, we are submitting the following questions pertaining to the NRC letter dated October 13, 2011 pertaining to the review of Colorado's regulatory parts 1, 3, and 18. Specifically, we request clarification on the following items relating to specific items in Colorado's Part 3, and 18:

1. Item 19 of the letter discusses the use of a definition for "active maintenance" in Part 18 and has recommended deletion from Part 18. It is clear that 10 CFR Part 40 has no similar definition. Although NRC does not explicitly define the term in Part 40, NRC does use the term "active maintenance" in Appendix A, Section I (Criterion 1), and in Section IV (Criterion 12) of Part 40. The manner in which the term is used in Part 40 seems consistent with the definition and intent of its use in Part 61. Colorado's use of the term is only on one occasion and is equivalent to the use in Criterion 1. Since Part 40 does not define the term, what is meant by the term "active maintenance" as it is used in Part 40 and how does its use or intent in Part 40 differ from its use in Part 61?

It is believed that if retained in Part 18, the term would not create significant "...duplications, conflicts, and gaps..." as stated. Part 18 is separate and distinct from Colorado's Part 14 (the equivalent to Part 61) and are not applied simultaneously. However, we will evaluate this further as NRC provides additional information.

2. Item 22 of the letter discusses the use of the phrase "residual radioactive material". NRC has stated that Colorado has omitted the definition for "residual radioactive material" from Part 18, but NRC does not clearly suggest that this term be added to Part 18.

In review of the existing Part 18, Colorado does not currently use the term. Colorado can add this definition to Part 18, although it seems without further additions of this language to the body of Part 18, this would not be meaningful. Our review of 10 CFR Part 40 indicates that NRC uses this term several time(s). (Note that Colorado's

regulatory structure is such that Part 40 requirements are divided among Colorado's Parts 3, and 18.)

In this same item 22, NRC has commented that Colorado uses the term "residual radioactive material" in Part 3 (Section 3.16) of the Colorado regulations. NRC suggests that this term be deleted from Colorado's Part 3 due to jurisdictional issues. Colorado would like to request that NRC provide clarity on the use of this term in our Part 3, since the term "residual radioactive material" is used in the same general manner in CRCPD's Suggested State Regulations (SSRCRs) Part C.32 (2010) which Part 3 is based upon. NRC should clarify why this term is not correct in Colorado's regulations but appears to be acceptable in SSRCR Part C.

3. Item 24 of the letter discusses the lack of definition for "uranium milling" in Colorado's Part 18. While we recognize that the compatibility category for the definition is a category A, the locations where it is used in Part 40 are lesser compatibility categories [e.g., 40.31(f) = D; 40.32 = H&S; 40.42(j)(2) = H&S; 40.42(k)(3)(i) = H&S; 40.65(a) = C]. Additionally, the structure of Colorado's regulations is different than that of the CFR's in that Part 40 contains more broad licensing requirements as well as specific Uranium milling requirements. Colorado regulations are structured in such a manner that elements of 10 CFR Part 40 are distributed among Colorado's Parts 3, 4, and 18, and which has been structured this way for many years. Colorado's current Part 18 is a separate section that specifically applies to and provides additional requirements for uranium and thorium processing facilities and so we believe the addition of this definition alone would not provide significant or improved understanding in Part 18. We request that NRC reevaluate the need for incorporation of this definition in Part 18.
4. Item 25 of the letter states that Colorado omitted the requirements of 10 CFR 40.46 from Part 18. As specified in Part 18, Section 18.1.1, the requirements of Part 18 are in addition to those in other parts of Colorado regulation, including Part 3. Section 3.15.2 of Part 3 contains nearly identical language to that of 10 CFR 40.46 and is identical to the language of SSRCR Part C.31. We therefore request that NRC clarify why the provision of Part 3, Section 3.15.2 does not adequately address the 10 CFR 40.46 requirements for Uranium facilities in the context of Colorado's regulatory structure.

Thank you in advance for your consideration and response.

James S. Jarvis
Sr. Health Physicist
Radiation Program HMWMD-RM-B2
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

303-692-3454 | james.jarvis@state.co.us

FAX: 303-759-5355

24/7 Incident & Notification #: 303/877-9757

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