

Sollenberger, Dennis

From: Brown, Carrie
Sent: Monday, April 12, 2010 11:20 AM
To: Sollenberger, Dennis
Cc: Schneider, Kathleen
Subject: FW: Colorado Department of Public Health and Environment Agreement State Program and Atomic Energy Act State Compliance Requirements
Attachments: UW_toDWhite_NRC_reCDPHE.100407.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

From: White, Duncan
Sent: Wednesday, April 07, 2010 5:18 PM
To: Brown, Carrie
Subject: FW: Colorado Department of Public Health and Environment Agreement State Program and Atomic Energy Act State Compliance Requirements

Additional information.....

From: sarah@uraniumwatch.org [<mailto:sarah@uraniumwatch.org>]
Sent: Wednesday, April 07, 2010 4:22 PM
To: White, Duncan
Subject: Colorado Department of Public Health and Environment Agreement State Program and Atomic Energy Act State Compliance Requirements

Dear Mr. White,

Attached please find a follow-up letter regarding the Colorado Department of Public Health and Environment Agreement State Program and Atomic Energy Act State Compliance Requirements. A paper copy will follow in the mail.

Sarah M. Fields
Program Director
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Uranium Watch

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via electronic and first class mail

April 7, 2010

Duncan White, Branch Chief
Agreement State Programs Branch
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Duncan.White@nrc.gov

RE: Colorado Department of Public Health and Environment Agreement State Program
and Atomic Energy Act State Compliance Requirements

Dear Mr. White:

Thank you for your March 23, 2010, acknowledgement of my letter of March 23, 2010, regarding Colorado Department of Public Health and Environment Agreement Program and Atomic Energy Act State Compliance Requirements.

I am not in the Denver area; so do not have all of the Colorado uranium mill licensing documents readily available. However, it appears that the Colorado Department of Public Health and Environment (CDPHE) has a long history of ignoring the provisions of 42 U.S.C. § 2021(o) with respect notice and comment and the requirements for an environmental analysis for licensing actions. For example:

1. The last opportunity for public comment on the Cotter Corporation's Cañon City Uranium Mill license was the License Renewal Hearing in September 2005.
2. In License Amendment 50, 2-10-2009, CDPHE changed Cotter's License Condition 29.4 (from Amendment 49 requiring "plans" for closure of the Secondary Impoundment and Dewatering of the Primary) to: "The licensee shall, based on Department approved schedules, proceed toward closure of the secondary impoundment, dry placement of tailings generated in the future, and pumping solutions from the Primary Impoundment standpipe for evaporation." Evaporating and dewatering the Secondary Impoundment also required a change

to the 1988 Remedial Action Plan, part of the Consent Decree in Federal Court, and there was no public comment period offered for that action.

3. The Secondary Impoundment at Cotter's Cañon City Mill has been inoperable since 2005. The mill's license has not been amended to include enforceable reclamation milestones for the Secondary Impoundment, as required by 40 C.F.R. Part 40, Appendix A, Criterion 6A. CDPHE is required to provide for public notice and comment regarding "receipt of requests, intent to issue amendments, or intent to issue orders which [1] incorporate reclamation plans or other schedules for effecting final closure into licenses, and [2] amend reclamation schedules as necessary for reasons of technological feasibility ... after the reclamation plans have been incorporated into the licenses," pursuant to the "Memorandum of Understanding Between EPA [Environmental Protection Agency], NRC [Nuclear Regulatory Commission], and the State of Colorado, Texas, and Washington Concerning Clean Air Act Standards for Radon Releases From Uranium Mill Tailings, Subparts T and W, 40 CFR Part 61" (56 Fed. Reg. 55434, October 25, 1991).
4. Apparently, the CDPHE does not issue environmental analyses for license amendments that occur between license renewal periods.
5. With respect the license renewal Application in September 2003, CDPHE declared the Application "substantially complete," and the public had two meetings/hearings to comment on Cotter's Application and Environmental Report. CDPHE released a Decision Analysis, but there were no further opportunities to comment. When Cotter appealed the licensing decision, an adjudicatory hearing was held in September 2005, where the public could comment. In other words, the public has no opportunity for comment unless someone objects to the CDPHE's final proposed license in the context of an adjudicatory hearing. Adjudicatory hearings cost money and require the establishment of standing. This is not the process that was envisioned by the Atomic Energy Act: 42 U.S.C. § 2021(o).

Uranium Watch requests that the Nuclear Regulatory Commission (NRC) conduct a complete investigation and evaluation of the history of the State of Colorado's implementation of the 42 U.S.C. Section 2021(o) environmental analysis and notice and comment requirements.

Uranium Watch requests that the NRC conduct an investigation into whether the Cañon City Mill license has been amended to include a detailed reclamation plan and a firm reclamation schedule for final closure and any interim actions leading to final closure (such as dewatering, clean up of contaminated soil and windblown tailings, and placement of an interim cover) for the Secondary Impoundment, as required by 10 C.F.R. Part 40, Appendix A, Criterion 6A.

Duncan White/NRC
April 7, 2010

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Thank you for looking into this matter and a timely response to these concerns and requests.

Sincerely,

Sarah M. Fields
Program Director
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