



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 6, 2012

Mr. Jeffrey C. Parsons
Senior Attorney
P.O. Box 349
Lyons, CO 80540

SUBJECT: The Concern You Raised to the U.S. Nuclear Regulatory Commission (NRC)
Regarding the Colorado Department of Public Health and Environment –
FSME-2011-AS-0004

Dear Mr. Parsons:

The U. S. Nuclear Regulatory Commission (NRC) has concluded its inquiry into the concerns you raised during a March 10, 2011 telephone conversation with Mr. Duncan White regarding the Colorado Department of Public Health and Environment (CDPHE). You expressed concerns about the CDPHE implementation of the sections of the Atomic Energy Act of 1954, as amended, that are applicable to NRC Agreement States with uranium mill authority (11e.(2) byproduct material authority). The concerns you raised and the NRC response are provided in the enclosure.

Thank you for informing us of your concerns. We believe that our actions in this matter have been responsive. Please keep in mind that closure of a concern does not prevent us from revisiting it, especially if we obtain new information. As detailed in our attached responses, the NRC will continue to monitor Colorado's actions in the Piñon Ridge Uranium Mill licensing action.

The NRC staff takes its safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. Unless the NRC receives additional information that suggests that our conclusions should be altered, we plan no further action on this matter other than those identified in the Enclosure. Should you have any additional questions, or need further assistance in this matter, please contact Mr. Duncan White on (301) 415-2598 or email duncan.white@nrc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jackson".

Deborah Jackson, Deputy Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials and
Environmental Management Programs

CERTIFIED MAIL 7006 0810 0005 9659 6774
RETURN RECEIPT REQUESTED

A23

STATEMENT OF CONCERN AND NRC RESPONSE
FSME-2011-AS-0004

Concern:

It is the understanding of the concerned individual (CI) that on January 5, 2011, the Colorado Department of Public Health and Environment (CDPHE) announced their approval of a radioactive materials license for the proposed Energy Fuels Resources Corporation Piñon Ridge Uranium Mill in the Paradox Valley, Montrose County, Colorado, and issued the Environmental Impact Analysis. The CI expressed a concern that the CDPHE failed to provide the public with the opportunity to request a formal adjudicatory proceeding after publication of the required environmental report or to pursue judicial review of state licensing decisions.

NRC Response:

The NRC has substantiated your concern that CDPHE did not provide an opportunity for a public hearing or notice for public comment on the Piñon Ridge Uranium Mill proposed license. It was the NRC staff's understanding that Colorado Regulations at 6 CCR 1007-1, Part 18.6.1 provided for a public notice announcing an opportunity for the public to submit comments and participate in a public hearing regarding the issuance of a new license. In review of the Piñon Ridge Uranium Mill licensing documents, statements made in court documents submitted by the State of Colorado in the Sheep Mountain Alliance vs. CDPHE litigation and discussions with the State of Colorado staff, the NRC staff does not believe that the licensing of the Piñon Ridge Uranium Mill provided the public with an opportunity for comment or an opportunity for a public hearing as required by the AEA, Section 274o. through the Colorado amended Agreement.

The NRC finding was brought to the attention of the CDPHE, and they proposed the following actions to correct the regulatory shortcomings:

1. The CDPHE will provide modifications to its regulations that would clarify the regulation in 6 CCR 1007-1, Part 18.6.1 to specifically provide for a public notice announcing an opportunity for the public to submit comments and request a public hearing for uranium milling licensing actions potentially impacting the environment. The State of Colorado will notify the NRC of the changes to its regulations.
2. The CDPHE will work with Energy Fuels in order to provide an opportunity for a public hearing regarding the issuance of the new license for the Piñon Ridge Uranium Mill and the Environmental Impact Analysis.

The NRC is presently working with the State of Colorado to ensure that an opportunity for the public to submit comments and an opportunity for a public hearing on the licensing of the Piñon Ridge Uranium Mill is provided. The NRC is also committed to working with the State of Colorado so that the regulations at 6 CCR 1007-1, Part 18.6.1 and its statute at CRS 24-4-104 come into full compliance with the equivalent NRC regulations.

The NRC staff believes the proposed actions, when completed, will address your concerns. These actions will continue to be tracked under the Integrated Materials Performance Evaluation Program (IMPEP); the next IMPEP periodic meeting between the NRC staff and the State of Colorado is scheduled for April 2012.

Enclosure

Mr. Jeffrey C. Parsons
 Senior Attorney
 P.O. Box 349
 Lyons, CO 80540

SUBJECT: The Concern You Raised to the U.S. Nuclear Regulatory Commission (NRC) Regarding the Colorado Department of Public Health and Environment – FSME-2011-AS-0004

Mr. Parsons
 Dear ~~Ms. Fields~~:

The U. S. Nuclear Regulatory Commission (NRC) has concluded its inquiry into the concerns you raised during a March 10, 2011 telephone conversation with Mr. Duncan White regarding the Colorado Department of Public Health and Environment (CDPHE). You expressed concerns about the CDPHE implementation of the sections of the Atomic Energy Act of 1954, as amended, that are applicable to NRC Agreement States with uranium mill authority (11e.(2) byproduct material authority). The concerns you raised and the NRC response are provided in the enclosure.

Thank you for informing us of your concerns. We believe that our actions in this matter have been responsive. Please keep in mind that closure of a concern does not prevent us from revisiting it, especially if we obtain new information. As detailed in our attached responses, the NRC will continue to monitor Colorado's actions in the Piñon Ridge Uranium Mill licensing action.

The NRC staff takes its safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. Unless the NRC receives additional information that suggests that our conclusions should be altered, we plan no further action on this matter other than those identified in the Enclosure. Should you have any additional questions, or need further assistance in this matter, please contact Mr. Duncan White on (301) 415-2598 or email duncan.white@nrc.gov.

Sincerely,

Deborah Jackson, Deputy Director
 Division of Intergovernmental Liaison
 and Rulemaking
 Office of Federal and State Materials and
 Environmental Management Programs

DO NOT PLACE IN ADAMS

OFC:	FSME: DMSSA	FSME: OAC	FSME: DMSSA	FSME: DILR
NAME:	SPoy <i>SP</i>	TPowell <i>[Signature]</i>	DWhite <i>[Signature]</i>	DJackson <i>[Signature]</i>
DATE:	2/21 112	2/23/12	2/27/12	3/5/12 2/27 112

3/5

OFFICIAL RECORD COPY