

August 6, 2012

The Honorable Mark E. Udall
United States Senate
Washington, DC 20510

Dear Senator Udall:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your two letters of June 26, 2012, to the NRC's Office of Congressional Affairs, forwarding correspondence from a number of your constituents. They wrote regarding the NRC's role in the Piñon Ridge uranium mill licensing matter, which is before the Colorado Department of Public Health and Environment (CDPHE) and was the subject of a lawsuit in the Colorado courts.

As part of a formal agreement between Colorado and the NRC signed in 1968 (and amended in 1982), the NRC relinquished authority to Colorado for the licensing and inspection of byproduct, source, and limited quantities of special nuclear materials used or possessed within its borders, including the regulation of uranium mills. The NRC maintains oversight responsibility of Colorado and other Agreement States through the Integrated Materials Performance Evaluation Program (IMPEP) to ensure that public health and safety are adequately protected from the potential hazards associated with the use of these materials, and that Agreement State programs are compatible with the NRC's program. The NRC reviews individual Agreement State licensing actions as part of the program review under the IMPEP process. Collectively the licensing action reviews are used by the NRC to make an "adequacy finding" regarding the technical quality of state licensing actions. In our most recent IMPEP review in 2010, we determined that Colorado's program was adequate to protect public health and safety and compatible with NRC regulations. This is the highest rating an Agreement State can receive from an IMPEP Review.

In a separate, but related matter, the NRC investigated performance concerns raised to the NRC regarding Colorado's process for public participation during licensing decisions relating to uranium recovery operations. The NRC correspondence to the individuals who raised the concerns, and referenced by your constituents, was a part of this process. Specifically, a letter dated March 6, 2012, informed the concerned individuals that the concerns raised had been closed based on the NRC staff's interactions with the State. The staff also informed the concerned individuals that it would track the proposed resolutions through normal program oversight of the Colorado program (i.e., through IMPEP).

In retrospect, that correspondence was not clear, as it was not the NRC staff's intent to intercede in the then-pending litigation related to the Piñon Ridge uranium mill license issued by CDPHE. It was our intent merely to provide the concerned individuals with the status of our coordination with Colorado. The NRC does not normally involve itself in state issues or state court litigation.

The NRC staff will continue to work with the State of Colorado through the IMPEP process to ensure the State regulations are compatible with the statutory requirements, as required by the

M. Udall

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agreement. The NRC will use the established procedures under the IMPEP review process to address any compatibility concerns regarding the Colorado program. Resolution of any concerns regarding a particular licensing action taken by the State of Colorado, under its state agreement with NRC, is a matter for CDPHE and the Colorado courts to decide.

As you may be aware, on June 13 the Colorado court set aside CDPHE's licensing action and directed CDPHE to hold a public meeting within 75 days of July 5, 2012. The court also directed CDPHE to make a determination on the application (approve, approve with conditions, or deny) within 270 days of July 5, 2012.

Should you have any additional questions, please contact me or Rebecca Schmidt, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA Michael Weber for/

R.W. Borchardt
Executive Director
for Operations

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