September 21, 2012

Mr. Arthur W. Kleinrath
Site Manager
U. S. Department of Energy
Office of Legacy Management
2597 Legacy Way
Grand Junction, CO 81503

SUBJECT: U.S. DEPARTMENT OF ENERGY REQUEST FOR U.S. NUCLEAR REGULATORY COMMISSION CONCURRENCE ON U.S. DEPARTMENT OF ENERGY PROPOSAL TO ONLY TAKE TITLE TO LANDS THAT ARE REQUIRED FOR DISPOSAL CELL MAINTENANCE AT THE URAVAN, COLORADO SITE

Dear Mr. Kleinrath:

This letter responds to your August 1, 2012 letter to Keith McConnell (ML12221A038) requesting U.S. Nuclear Regulatory Commission (NRC) concurrence with the U.S. Department of Energy's (DOE) proposal that the DOE only take title to lands that are required to maintain the disposal cell at the Uravan, Colorado site. Your letter included a request for comment on your plan to protect public health and safety through a Long-Term Surveillance Plan that would exclude long-term surveillance activities for the designated Alternate Soil Areas and the Club Ranch area (the Club Ranch area is located on a flood plain approximately 500 feet below the disposal cell). Your plan noted that there were no surface or ground water rights available for use by others, and that approved Alternate Soil Standards and proposed institutional controls would provide the required protectiveness for those areas with residual contamination that would be outside of the proposed long-term care boundary.

Based on our review of your letter, the NRC has determined that under Section 83 of the Atomic Energy Act (AEA) of 1954, as amended, *Ownership and Custody of Certain Byproduct Material and Disposal Sites,* the United States retains ownership of the byproduct material associated with the licensed waste management activities at this site. These activities have resulted in a ground water contaminant plume that does not meet public health and safety standards (the byproduct material is found within the Club Ranch evaporation ponds area in the ground water plume). We do not find that title and ownership of byproduct material is solely restricted to those areas directly associated with disposal-cell maintenance nor that DOE taking title and ownership of more than these areas contravenes in anyway the intent of the June 10, 2010 Presidential Memorandum to eliminate excess federal properties (75 FR 33987). Inclusion of the Club Ranch area and associated ground water contaminant plume within the long-term care boundary is required by the AEA and is not inconsistent with the objectives and metrics of the DOE Strategic Plan. This position is consistent with your March 12, 2012 document *Process for Transition of Uranium Mill Tailings Radiation Control Act Title II Disposal Sites to the U. S. Department of Energy of Legacy Management for Long-Term Surveillance and Maintenance*. This document cites Uravan as one of four U.S. Environmental Protection Agency (EPA) National Priorities List Superfund sites where DOE will, at the time of transition, work with the NRC and EPA to determine the regulatory roles of each agency. The March 2012 document highlights the importance of finalizing site boundaries and clearly distinguishes between land ownership boundaries and the long-term custodial boundaries. The March 2012 document is

not limited to the disposal cell itself and refers to the DOE's responsibility to maintain a reclaimed uranium mill site to protect public health and the environment in accordance with DOE Order 5400.5 *Radiation Protection of the Public and the Environment*. The March 2012 document uses the example of the Title II Split Rock uranium decommissioning site for differentiating between the DOE ownership boundary and the DOE long-term care boundary. In this example, the land area owned by the DOE is much larger than the area encompassed by the disposal cell.

The NRC is of the opinion that the DOE should assume title and custody for both the disposal cell and the Club Ranch evaporation ponds area of this property. This approach is consistent with the requirements of Section 84 of the AEA, *Authorities of Commission Respecting Certain Byproduct Material,* that the management of byproduct material protects the public health and safety and the environment, with due consideration of the economic costs and other factors that the Commission determines to be appropriate. This conclusion on economic considerations is consistent with your statements regarding such things as verification of the status of institutional controls and visual monitoring of land use during DOE annual inspections. The NRC agrees with your statement that past ground water and surface water contamination levels have been consistent, and that there may be no further need for surface and ground water quality monitoring activities in the near term because the water quality has been shown to be steadily improving. However, for the Club Ranch area to be deleted from the long-term care, it would be necessary to have ground water monitoring to demonstrate that the levels of byproduct material meet unrestricted release criteria. As you indicated, and NRC agrees, including the Club Ranch area with ground water monitoring will necessitate an adjustment to the long-term surveillance charge. If DOE chooses to discontinue ground water monitoring and retain the site permanently, then no adjustment of the long-term surveillance charge would be necessary.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html.

If you have any questions concerning the above, please contact Philip Brandt at (301) 415-3550 or via email at Philip.Brandt@nrc.gov.

Sincerely,

/RA/
Lydia Chang, Chief
Special Projects Branch
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

cc: Uravan Working Group
S. Lipstein, EMCBC

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