November 7, 2012

Ms. Janet Brooks
Superfund Program
Louisiana/Oklahoma/
New Mexico Section (6SF-RL)
U.S. EPA, Region 6
1145 Ross Avenue
Dallas, TX 75202

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION COMMENTS ON THE FINAL SURFACE SOIL OPERABLE UNIT PROPOSED PLAN FOR THE UNITED NUCLEAR CORPORATION SUPERFUND SITE – JULY 2012

Dear Ms. Brooks:

The U.S. Nuclear Regulatory Commission (NRC) welcomes the opportunity to provide comments on the U.S. Environmental Protection Agency (EPA) document entitled, "Surface Soil Operable Unit Proposed Plan, United Nuclear Corporation Superfund Site," July 20, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12227A558). Historically, the Northeast Church Rock (NECR) Mine engaged in conventional strip mining of uranium ore which was processed at the adjoining United Nuclear Corporation (UNC) Church Rock Mill facility. Both facilities are owned and operated by UNC.

The Surface Soil Operable Unit Proposed Plan (Proposed Plan) provides two options to address the final disposition of approximately 1 million cubic yards of low level threat mine waste from the NECR site. The first option involves "no action" with waste remaining in place at the NECR Mine site. The second option, which is identified as the EPA preferred alternative, involves transferring NECR mine waste to the NRC licensed UNC Church Rock Mill site. Although the NRC has no preference with regard to the NECR low level threat mine waste disposal pathways, the NRC staff focused its review on the second option. This is because the collocation of the NECR mine waste at the UNC Church Rock Mill site will put it within the footprint of the existing tailings cell which is subject to NRC's jurisdiction.

The UNC Church Rock Mill site contains "byproduct material" as defined by section 11e.(2) of the Atomic Energy Act of 1954, as amended, and is regulated by the NRC pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA). The NRC issued license for this byproduct material is source materials license SUA-1475. Thus, any modification to the byproduct tailings disposal cells at the UNC Church Rock Mill site is subject to NRC jurisdiction. The framework for the NRC comments regarding the collocation of NECR mine waste or "non-11e.(2) byproduct material" with byproduct material at the UNC Church Rock Mill site is the NRC document entitled, "NRC Regulatory Issue Summary 2000-23 Recent Changes to Uranium Recovery Policy," Attachment 1, "Interim Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments," November 30, 2000 (ADAMS Accession No. ML003773008).

The NRC staff understands that once EPA Region 6 reviews the public comments on the Proposed Plan, it will make the final remedy selection decision, which will be documented in a Record of Decision (ROD) pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) at Title 40 of the *Code of Federal Regulations* (CFR) Part 300. If the EPA preferred alternative of moving the NECR mine waste to the Church Rock Mill site is selected, then an Administrative Agreement would be executed between EPA Region 6, EPA Region 9, and the property owner General Electric/UNC. Also, UNC would submit to the NRC, for NRC approval, a license amendment to amend source materials license SUA-1475 to permit the placement of NECR mine waste at the UNC Church Rock Mill site within the existing byproduct tailings cells.

Please note that as part of this license amendment package, UNC will be required to include a revised Reclamation Plan and Financial Surety to be reviewed by the NRC staff to determine whether the proposed changes to features at the UNC Church Rock Mill site (i.e., erosion protection, radon barrier, geotechnical stability of slopes) comply with 10 CFR Part 40, Appendix A and are consistent with appropriate sections of NUREG – 1620, Rev. 1 (ADAMS Accession No. ML031550522) and NUREG – 1623 (ADAMS Accession No. ML022530043). Upon completion of the public participation process and if the license amendment and accompanying revised Reclamation Plan and Financial Surety are accepted and approved by the NRC, the NRC will assume jurisdiction for only that NECR mine waste collocated within the existing tailings disposal cells until the decommissioning process is completed for the UNC Church Rock Mill site and the site is transferred under a general license to the U.S. Department of Energy (DOE) for long term custodial care. The NRC is aware of the challenges related to long-term controls at the UNC Church Rock Mill site and fully supports the DOE comments related to its future role in this matter (ADAMS Accession No. ML12278A055). Enclosed are the detailed NRC comments on the Proposed Plan.

In accordance with 10 CFR 2.390 of the NRC Rules of Practice, 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 the NRC ADAMS. ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html.

If you have any questions, please contact me at (301) 415-7741, or by e-mail at yolande.norman@nrc.gov.

Sincerely,

/RA/

Yolande Norman, Project Manager
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Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Enclosure:
U.S. Nuclear Regulatory Commission
comments on the EPA Surface Soil
Operable Unit Proposed Plan,
United Nuclear Corporation
Superfund Site, July 20, 2012

Docket No.: 40-8907
License No.: SUA-1475

cc: UNC Church Rock Distribution List

If you have any questions, please contact me at (301) 415-7741, or by e-mail at yolande.norman@nrc.gov.

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U. S. Nuclear Regulatory Commission Comments on the EPA "Surface Soil Operable Unit Proposed Plan, United Nuclear Corporation Superfund Site, July 20, 2012"

1) Regulatory Role

- *Page 1, column 1, paragraph 1, "This document is issued by the U.S. Environmental Protection Agency (EPA), the lead agency for site activities, after review by the* ***New Mexico Environment Department (NMED), the support agency for site activities****."*

- *Page 6, column 2, paragraph 1, "****The lead and support agencies (at the UNC Site, EPA and NMED are the lead and support agencies respectively)*** *must identify their applicable or relevant and appropriate requirements (ARARs)…The lead and support agencies may also, as appropriate, identify other pertinent advisories…"*

Please clarify the highlighted section of the aforementioned statements by describing NMED's role as a support agency and its jurisdictional responsibility for activities at the UNC Church Rock Mill site. Perhaps it would be helpful to distinguish the various roles of each regulatory entity for both the NECR Mine and the UNC Church Rock Mill sites.

2) *Page 1, column 1, paragraph 1, "This Surface Soil OU Proposed Plan deals only with a limited aspect of the surface soil OU remedy at the UNC Site - the disposal of low level mine waste from the NECR Site within the Tailings Disposal Area of the UNC Site and is taken as an intermediate step prior to final remedial action for the surface soil OU at the UNC Site…."*

The aforementioned statement requires clarification. Based on the NRC's understanding, the Surface Soil Operable Unit Proposed Plan considers only the final disposition of the NECR mine waste which is independent of final soil reclamation activities and groundwater corrective measures at the UNC Church Rock Mill site.

3) *Page 1, column 2, paragraph 1; Page 2, column 1, paragraph 1, "…the U.S. Nuclear Regulatory Commission (NRC) agrees to amend United Nuclear Corporation's license to allow this disposal."*

The aforementioned statement is inaccurate and misleading. The mechanism to authorize the disposal of non-11e.(2) byproduct materials (e.g., mine waste) is an amendment to the UNC Church Rock Mill source materials license that was issued by the NRC under Title 10 of the *Code of Federal Regulations* (CFR) Part 40. UNC, the licensee, will need to submit a request to the NRC to amend its Church Rock Mill source materials license SUA-1475 to allow for the disposal of mine waste within the footprint of the existing tailings cells. This license amendment package, supplemented by the final design for the tailings cover, financial surety, and pertinent environmental reports, will be reviewed by the NRC staff. The public will then have opportunities to comment on the UNC amendment request. The totality of this information will be considered by the NRC prior to any final decision on the licensee's license amendment request.

Enclosure

In accordance with "NRC Regulatory Issue Summary 2000-23 Recent Changes to Uranium Recovery Policy," Attachment 1, "Interim Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML 003773008), the disposal of non-11e.(2) material in the tailings impoundments is subject to specific considerations. Therefore, in reviewing a licensee request for the disposal of waste that has radiological characteristics comparable to 11e.(2) byproduct material, it is incumbent upon the licensee to: (1) provide documentation showing necessary approvals of other affected regulators (e.g., US EPA, Navajo Nation EPA, State, etc.) for material containing listed hazardous wastes or any other material regulated by another Federal agency or State because of environmental or safety considerations; (2) demonstrate that there will be no significant environmental impact from disposing of this material; (3) provide documentation showing approval by the Regional Low-Level Waste Compact in whose jurisdiction the waste originates as well as approval by the Compact in whose jurisdiction the disposal site is located, for material which would otherwise fall under Compact jurisdiction; and (4) demonstrate that the proposed disposal will not compromise the reclamation of the tailings impoundments by demonstrating compliance with the reclamation and closure criteria of Appendix A of 10 CFR Part 40.

Since mill tailings impoundments are already regulated under 10 CFR Part 40, licensing the receipt and disposal of non-11e.(2) byproduct material (e.g., mine waste) therein will also be done under 10 CFR Part 40. As part of the process, the U.S. Department of Energy (DOE) and the State of New Mexico will need to be informed of the NRC findings and proposed action, with a request to concur within 120 days. A concurrence and commitment from either DOE or the State to take title to the tailings impoundment after closure must be received before granting the UNC license amendment request. Therefore, it is incorrect to simply state that the NRC "agrees to amend" a licensee's license. A more accurate wording would be, that the NRC "agrees to consider the merits of any license amendment request that UNC submits to amend its license to allow this disposal" and a description of the NRC approval process as described above should be included.

4) *Page 3, column 1, paragraph 2; page 20, column 2, paragraph 1, "Because of the similarity of threat posed by the mine waste in the areas on the NECR Site where mine waste has been deposited and consolidated (Consolidation Areas) and the threat posed by* ***tailings in the covered pits and landfills that make up the UNC Site Tailings Disposal Area…****"*

Suggest appropriately describing the Tailings Disposal Area as comprising three covered tailing cells and two covered burrow pits.

5) <u>Preferred Alternative</u>

- *Page 67, Glossary of Terms, "Preferred Alternative - Proposed remedial alternative that meets NCP evaluation criteria and is supported by regulatory agencies."*

In the Glossary of Terms, the NRC does not concur with the definition of "Preferred Alternative" because it states that a Preferred Alternative is that proposed remedial alternative that is "supported by regulatory agencies." This implies that the Preferred

Alternative is the selected option of the NRC which is a mischaracterization of the NRC license amendment process, which would have to be undertaken if the Preferred Alternative is selected by the EPA for implementation by UNC. The NRC does not support any alternative; rather, as described above, the role of the NRC is to evaluate any license amendment that may be submitted to it by UNC. It is the NRC's understanding that the Preferred Alternative in this Proposed Plan was selected by EPA Region 9 in the Non-Time Critical Removal Action Memorandum executed on September 29, 2011 (ADAMS Accession No. ML12003A095) and is supported by EPA Region 6 as discussed in the Proposed Plan. Therefore, the description of Preferred Alternative in the Glossary of Terms should state that the Preferred Alternative is identified by EPA, the lead agency, in conjunction with NMED, the support agency, and not that it is "supported by regulatory agencies" in general. This would be consistent with 40 CFR 300.430(f)(1)(ii).

6) Permit

- *Page 3, column 2, paragraph 2; page 4, column 1, paragraph 1, "By combining the Consolidation Areas and the Tailings Disposal Area, the Preferred Alternative can be implemented without State, Federal or local permits as provided in CERCLA section 121(e), 42 U.S.C. §9621(e)."*

The presumption is made that the use of the term "permit" excludes the NRC source materials license for the UNC Church Rock Mill site. This should be made explicit with a concluding clause such as, "with the exception of the associated NRC source materials license, which must be amended by UNC as discussed below."

7) Previous Actions

- *Page 9, column 1, paragraph 1, "In keeping with the MOU, EPA has* ***consulted with the NRC*** *prior to issuing this Surface Soil OU Proposed Plan."*

Suggest deleting the highlighted phrase and replacing with "provided the NRC an opportunity to comment."

- *Page 9, column 2, paragraph 2, "United Nuclear Corporation undertook the following actions under its NRC License (EPA, 2008). On July 16, 1979, the dam at the south tailings disposal cell at the UNC Site failed…."*

This introductory statement on NRC's licensing action that immediately precedes the discussion on the 1979 dam failure suggests that the event occurred at the UNC Church Rock Mill site while it was licensed by the NRC, which is incorrect. Recommend including a timeline for NMED's licensing authority of the UNC Church Rock Mill site. Please note that on April 19, 1974, New Mexico became an Agreement State with licensing authority granted by the U.S. Atomic Energy Commission.

- *Page 10, column 1, paragraph 2, "The NRC certified these closure actions in 1989 and released the licensed areas of the mine for unrestricted use."*

Please correct the aforementioned statement which may have originated from information presented in the document entitled, "Northeast Church Rock Mine Closeout Plan," January 2004 (ADAMS Accession No. ML051510241). The specific facts were that in October 1989, after the NRC staff reviewed the UNC document entitled, "Tailings Sand Backfill Cleanup Verification Report, Northeast Church Rock Mine, United Nuclear Corporation," April 27, 1989 (ADAMS Accession ML080040301), the NRC determined that UNC had adequately removed remaining byproduct material from the NECR Mine site and that no further action was required by UNC pursuant to Condition No. 33 of its Church Rock Mill source materials license (ADAMS Accession No. ML073650348).

After assuming licensing authority for the Church Rock Mill site in June 1986, the NRC was aware that byproduct material from the site was historically transferred to the NECR Mine site to stabilize mine stopes. Given that there was NRC licensable material and associated equipment at the NECR Mine site resulting from historic milling activities, the NRC required that off-site wind-blown material be addressed as a condition of the source materials license for the UNC Church Rock Mill site. Thus, the NRC became directly involved in the NECR Mine closure activity, providing technical input on aspects related to radiologic surficial contamination since 11e.(2) byproduct material from the UNC Church Rock Mill operation was formerly staged at the NECR Mine site. However, the NRC never had jurisdictional responsibility for the NECR Mine site nor regulatory authority to require mine close-out activities. Therefore, there was never any area of the mine that was licensed by the NRC or subsequently released for unrestricted use by the NRC.

8) Conclusions on the UNC Church Rock Mill Site

- *Page 13, column 1, paragraph 2, and column 2, paragraph 1, "In response to concerns raised by the community, EPA reviewed documents related to the construction of the Tailings Disposal Area, in order to determine the load effect that the additional mine waste from the NECR Site would have on tailings already disposed in the Tailings Disposal Area…. Consequently, it is expected that the additional weight that the mine waste from the NECR Site will add to the tailings that are presently in the UNC Site Tailings Disposal Area will have negligible consequences on the stability of the tailings cell…."*

- *Page 15, column 1, paragraph 3, and column 2, paragraph 2, "This is important because it means that mine waste from the NECR Site can be stored in the cells at the Tailings Disposal Area without direct contact with the groundwater…. Based on these conclusions, disposal of the NECR Site mine waste at the UNC Site Tailings Disposal Area is not expected to interfere with or affect the ongoing remediation efforts regarding tailings or ground water at the UNC Site."*

- *Page 22, column 1, paragraph 2; Page 28, column 2, paragraph 2, "Mine waste disposal within the Tailings Disposal Area is not expected to interfere or affect the current groundwater remediation efforts."*

- *Page 24, column 1, paragraph 3, "Based on conservative evaluations of the tailings profiles and model sensitivity analyses… the added mine waste is not expected to result in the release of additional tailings liquid into the ground water or surrounding soil, is not expected to interfere or affect the current tailings or ground water remediation efforts that*

are currently ongoing, and is not expected to affect the stability of the tailings disposal cells."

- *Page 28, column 1, paragraph 2; Page 28, column 2, paragraph 1, "Based on conservative evaluations of the tailings profiles and model sensitivity analyses… the added mine waste is not expected to result in the release of additional tailings liquid into the ground water or surrounding soil, is not expected to interfere or affect the current mine waste or ground water remediation efforts that are currently ongoing, and is not expected to affect the stability of the tailings disposal cells."*

- *Page 35, column 2, paragraph 1, "The models showed that, due to evapotranspiration, vertical drainage and the lack of water recharge, excess free water no longer existed within the tailings now located in the Tailings Disposal Area… Based on these conclusions, disposal of the NECR Site mine waste at the UNC Site Tailings Disposal Area is not expected to interfere with or affect the ongoing remediation efforts regarding tailings or ground water at the UNC Site… Consequently, it is expected that the additional weight that the mine waste from the NECR Site will add to the tailings that are presently in the UNC Site Tailings Disposal area will have negligible consequences on the stability of the tailings cells…."*

In several sections of the Propose Plan, there are extensive discussions of the conceptual models and preliminary designs that have been presented to date. The NRC considers the conclusions based on these discussions to be premature. Given the numerous assumptions inherent in the conceptual models and preliminary designs, further field investigations and empirical data will need to be collected by UNC to verify certain of these assumptions and the field conditions before a detailed analysis can be conducted. Moreover, since modeling exercises and conceptual designs have not yet been technically vetted by the NRC staff, the NRC refrains from offering a position. The NRC will make any such decision on the effect of the NECR mine waste on the existing tailings disposal cells as part of its review of the related UNC license amendment request.

The NRC will continue to peer review work related to the NECR Mine site, similar to the detailed evaluation recently completed by the NRC staff on the document entitled "Consolidation and Water Storage Capacity Related to Placement of Mine Material on the Existing UNC Mill Site Tailings Impoundments Report," May 2011 (ADAMS Accession No. ML12222A281).

The NRC fully supports ongoing interagency technical discussions among EPA, NNEPA, NMED, NRC, and DOE in bringing timely resolution to outstanding technical issues and to ensure that the collocation of the NECR mine waste for disposal at the UNC Church Rock Mill site satisfies pertinent regulatory requirements while ensuring the safety and protection of human health and the environment.

9) Waste Volume

- *Page 1, column 2, paragraph 2, "…EPA decided to permanently dispose of approximately 1,000,000 cubic yards of contaminated mine waste from the NECR Site...."*

- *Page 17, column 2, paragraph 2, "…there is an estimated 871,000 cubic yards of mine waste at the NECR Site that is to be addressed."*

The volume of mine waste proposed for disposal is inconsistently stated throughout the document. Suggest utilizing the brief synopsis on page 30, column 1, paragraph 2, to introduce and outline how the 1 million cubic yards of low level threat mine waste was estimated. In addition, recommend including a statement that the disposal option is limited only to mine waste from the NECR Mine site.

10) Scope and Role of the Response Action

- *Page 1, column 1, paragraph 1, "This Surface Soil OU Proposed Plan deals only with a limited aspect of the surface soil remedy at the UNC Site…."*

- *Page 21, column 1, paragraph 2, "This proposed remedial action, referred to as the Surface Soil OU proposed remedial action, will be taken as an intermediate step prior to final remedial action for the surface soil OU at the UNC Site."*

- *Page 21, column 2, paragraph 2, "This surface soil OU remedial action at the UNC Site will be consistent with and supplemental to actions that will be necessary for NPL site completion and for deletion of the site from NPL under CERCLA."*

There is no nexus between the proposed remedial action under the Surface Soil Operable Unit Proposed Plan and final soil reclamation activities and groundwater remedial actions at the UNC Church Rock Mill site. The Surface Soil Operable Unit Proposed Plan addresses only the proposed disposal of low level threat mine waste from the NECR site at the UNC Church Rock Mill site.

The EPA's selection and implementation for collocating NECR mine waste at the UNC Church Rock Mill site is an independent action from final decommissioning activities at the UNC Church Rock Mill site. As described elsewhere in the document, the NRC understands that the EPA's ideal sequence of events is that (1) if the Preferred Alternative in the Surface Soil Operable Unit Proposal Plan is selected and (2) if the associated UNC license amendment request to permit the disposal of mine waste is approved by the NRC, then these activities will occur prior to UNC conducting final reclamation at the UNC Church Rock Mill site pursuant to license termination. However, please note that the Proposed Plan is not a supplement to final reclamation actions at the UNC Church Rock Mill site. This is because surface soil and groundwater remedial actions at the UNC Church Rock Mill site are not components of the Proposed Plan.

11) *Page 32, Figure 6, "Possible placement of mine waste at United Nuclear Corporation Mill Site.*

It is not be appropriate at this juncture, to speculate on the final design details of the cover, stormwater diversion channels, and other erosion protection features. Further detailed analyses of various design options and erosion protection requirements are needed. The NRC staff is committed to working with the EPA and other stakeholders to discuss these technical issues and their possible resolution.

- *Page 31, column 2, "a low permeability layer (liner) will be placed between the NECR mine waste and the tailings currently disposed within the Tailings Disposal area.… This layer will be compacted to meet a hydraulic conductivity of no more than 1 x 10^{-7} centimeters per second (cm/s)."*

Regarding the use of a liner, based on several inter-agency discussions, it is the NRC staff's understanding that the mine waste would be incorporated such that it is indistinguishable from the existing licensed byproduct material already within tailing disposal cells at the UNC Church Rock Mill. Both the DOE and NRC previously expressed reservations regarding the possible inclusion of a liner within the existing tailings disposal cells (ADAMS Accession Nos. ML090500024; ML092100623).

12) Future use/Institutional Controls/Five Year Reviews/Long-Term Surveillance and Maintenance

- *Page 30, column 2, paragraph 2, "Once all required actions are completed per the terms of the NRC license, it is expected that there would be a transfer of the UNC Site to the DOE's Long-Term Surveillance and Maintenance Program.…"*

- *Page 32, column 1, paragraph 2, "Since under Alternative 2, NECR mine waste will be disposed on the UNC Site within the Tailings Disposal Area, five year reviews will be required. The capped area will require Operation and Maintenance (O&M) activities as necessary including cap inspections and maintenance for continued cap stability, erosion protection, and contaminant containment."*

- *Page 33, column 1, paragraph 1, "Under CERCLA, the UNC Site will be restricted from uses other than long-term care of the Tailings Disposal Area. This means that residential, industrial, and grazing uses will be prohibited. It is expected that there would be a transfer of the UNC Site to the DOE's Long-Term.…"*

- *Page 33, column 1, paragraph 2; Page 40, column 2, paragraph 1, "The license is an effective institutional control (IC).... No other use of the UNC Site, other than long-term care, will be permitted unless the NRC grants a specific license allowing such use of the surface or subsurface.…"*

- *Page 39, column 1, paragraph 2, "UNC Site use restrictions will prohibit the residential, industrial, or grazing use and will restrict unauthorized access."*

- *Page 40, column 1, paragraph 2, "Alternative 2 supports the future reuse options… the UNC Site would be maintained and managed under the DOE to provide for continued containment and protectiveness."*

- *Page 40, column 2, paragraph 2, "If the NRC does not transfer all areas of the UNC Site to DOE at the time that the UNC Site owner's license is terminated, EPA will reevaluate the need for ICs and O&M activities for these areas since DOE would not be managing these areas of the UNC Site under these circumstances."*

- *Page 41, column 1, paragraph 1, "The Preferred Alternative will require long-term monitoring, Site inspections, and O&M to ensure the Tailings…."*

Given the challenges of administrative, engineered and institutional controls, the NRC recognizes that further interagency discussions are required with the EPA, the Navajo Nation, NMED, and other stakeholders to resolve issues related to long-term care of the UNC Church Rock Mill site, to ensure the continued protection and safety of public health and the environment. The NRC will work together with the DOE and the EPA to develop an interagency policy on closure and post-closure issues that will meet the statutory and regulatory missions and requirements of all agencies involved in the NRC-licensed UNC Church Rock Mill site being remediated under UMTRCA since it is also on the National Priority List and being remediated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

13) *Page 45 - 64, Table 1, Preliminary List of Applicable or Relevant and Appropriate Requirements.*

Please include the relevant NRC regulations enacting UMTRCA Title II - 10 CFR Part 40, Appendix A, Criteria 1, 2, 3, 5, 6, 6A, 9, 10, 11 and 12.