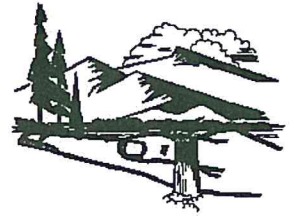




# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Matthew H. Mead, Governor



Todd Parfitt, Director

April 18, 2017

Daniel S. Collins  
U.S. Nuclear Regulatory Commission  
Division of Material Safety, State, Tribal, and Rulemaking Programs  
Office of Nuclear Material Safety and Safeguards

Two White Flint North  
11545 Rockville Pike  
Rockville, Maryland 20852-2738

**RE: Commission's pending decision on the American Nuclear Corporation (ANC) Gas Hills Site**

Dear Mr. Collins,

The Wyoming Department of Environmental Quality (WDEQ) has a defined interest and significant concern regarding the Commission's pending decision on the American Nuclear Corporation (ANC) Gas Hills site. WDEQ supports the Nuclear Regulatory Commission's (NRC) Staff opinion that NRC retain jurisdiction over the ANC site. This recommendation is consistent with NRC's existing Confirmatory Order and Modified Confirmatory Orders. It is Wyoming's position that future Agreement State status should not negate or modify NRC's existing Confirmatory Orders related to this site. NRC is responsible for retaining and funding the remaining reclamation and decommissioning of the site until such time as it is transferred to the Department of Energy (DOE).

WDEQ's position is derived from and based on the ANC site history and NRC regulatory oversight of the site. The ANC uranium mill tailings site is located in the Gas Hills in eastern Fremont County, Wyoming. The site is approximately 45 miles east of Riverton and 70 miles west of Casper. The site encompasses approximately 550 acres of land. Of the 550 acres, 140 acres comprise the decommissioned mill site and the two tailings ponds. The site was operational from 1960 through 1982. Initially, the mining and milling operations provided uranium for the federal government under the auspices of the Atomic Energy Commission (AEC). Eventually, uranium was allowed to be sold to private enterprises under the policies established by the AEC for the peaceful uses of atomic energy. During the life of the mill, almost 37% of the uranium processed was sold to the AEC.

Between 1982 and 1994, the ANC completed partial decommissioning and reclamation of the site. NRC approved ANC's original tailings closure and reclamation plan in 1984 attesting that it met the standards of the Uranium Mill Tailings Radiation Control Act (UMTRCA) at the time of approval. However, based on the 1990 Staff Technical Position (STP) guidance<sup>1</sup>, NRC staff requested that ANC reevaluate the 1984 closure plan design based on the concerns that the previously approved reclamation plan would not conform fully to UMTRCA requirements as outlined in 10 CFR 40 Appendix A. In response to a request by NRC, ANC submitted a revised reclamation plan in March 1992. NRC staff responded with technical review comments outlining the deficiencies of the revised reclamation plan on March 11, 1994. Shortly thereafter, in May 1994, ANC announced that it was discontinuing operations and initiating closure of the business. As a result, ANC never finalized the revised reclamation plan and therefore it was never approved by NRC. In addition, the financial assurance was never updated to reflect the increased costs of the required updates to the closure plan. Wyoming was not the regulatory authority at the time of these decisions and therefore did not have input in the financial assurance requirements for the decommissioning of the tailings material.

ANC subsequently forfeited its \$3.2 million dollar reclamation bond in October 1994. In October 1996, WDEQ commenced reclamation of the ANC site, pursuant to a Confirmatory Order<sup>2</sup> agreed upon between NRC and WDEQ. The Confirmatory Order provided specific conditions that WDEQ would need to fulfill as part of the site reclamation, including meeting the same requirements that were asked of ANC for the tailings material. WDEQ agreed to complete the reclamation in accordance with and to the extent funds remain available. However, Wyoming did not admit any fact, responsibility, fault, or liability in connection with the site and its financial assurance requirements. Additionally, the Confirmatory Order provided that WDEQ would not be required to perform or pay for any reclamation, remediation, monitoring, or surveillance of any type that exceeded the amount of money available to WDEQ from ANC's forfeited bond and DOE Title X funds. The Confirmatory Order mandated that NRC would terminate the Confirmatory Order at the time that WDEQ exhausted the funding available for reclamation.

A matter of great significance is the fact that, between the time of the forfeiture and the issuance of the Confirmatory Order, the Commission (SECY 95-155)<sup>3</sup> considered how to handle previously approved reclamation plans that no longer met new guidance. NRC staff recommended to the Commission that the previously approved reclamation plans should be reviewed to ensure compliance with the requirements of 10 CFR 40, Appendix A, based on the newly developed STP guidance. The Commission voted against the staff recommendation and granted finality to the previously approved reclamation plans. Most importantly, the intent of the Commission's decision was that, absent an imminent hazard associated with compliance with previously approved reclamation approaches, a finding by NRC staff of no significant threat to

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<sup>1</sup> United States Nuclear Regulatory Commission, Final Staff Technical Position, *Design of Erosion Protection Covers for Stabilization of Uranium Mill Tailings Sites*. (August 1990).

<sup>2</sup> ML071520354

<sup>3</sup> Enclosure 1 and 2 of ML012540081

public health and safety was sufficient to comply with NRC regulations. Further, the Commission ruled that at the time of license termination NRC staff would simply confirm that the reclamation was performed as approved and performed reclamation activities protected against significant threats to public health and safety.

Following the Commission's decision, NRC staff were uncertain as to whether the DOE would accept the site for transfer without update to the reclamation plan. To address this uncertainty, NRC staff made the decision to require compliance with parts of the updated guidance for the ANC site. Compliance with the new NRC recommendations resulted in a financial assurance deficiency because of costs associated with updating the reclamation plan to the new compliance standards and the additional work and resources needed to implement the updated plan. WDEQ will exhaust the remaining available funds for reclamation as set forth in the Confirmatory Order prior to completion of reclamation. WDEQ estimates the financial assurance deficiency at \$15 to 20 million using a 2016 valuation.

As outlined, the shortfall in funding necessary to complete the reclamation and decommissioning of the site has never been considered to be the result of any action by or the financial responsibility of Wyoming or WDEQ. Pursuant to the Confirmatory Orders, once WDEQ exhausts all of the available reclamation funding, NRC must assume responsibility for the site and the remaining reclamation and decommissioning obligations. The process of becoming an Agreement State should not affect the existing Confirmatory Orders.

Accordingly, WDEQ requests that the Commission vote to retain the ANC site under NRC's authority. Alternatively, if the Commission finds that WDEQ should assume responsibility for the site, it should also find that either NRC is responsible for providing all funding, after the exhaustion of the original financial assurance bond, necessary to finish reclamation and decommissioning so that the site can then be transferred to the DOE.

Sincerely,



Todd Parfitt  
Director of Wyoming Department of Environmental Quality

Cc: Kyle Wendtland  
Ryan Schierman  
Eva La