

Office of the Governor

September 7, 2017

The Honorable Kristine L. Svinicki,
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16B33
Washington, D.C. 20555

Dear Chairman Svinicki,

The State of Wyoming has received and reviewed the Commission Paper dated August 16, 2017, from Mr. McCree to the Commissioners identified as SECY 17-0081.¹ I have been pleased to observe that the Wyoming Department of Environmental Quality (WDEQ) and Nuclear Regulatory Commission (NRC) staff have worked closely on the development of a limited Section 274b Agreement.² I particularly appreciate the time and resources NRC staff has devoted to resolving the issue presented in SECY 17-0081. I encourage you to follow the NRC staff recommendation to remove the American Nuclear Corporation Site (ANC) from Wyoming's limited Agreement for source material involved in the extraction or concentration of uranium or thorium milling, and the management and disposal of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act³, as amended.

Wyoming concurs with NRC staff that the unique circumstances surrounding the ANC site justify the NRC's retention of jurisdiction over the ANC site. Wyoming and the NRC have worked cooperatively to remediate this challenging site since 1994.⁴ For these many years, Wyoming's financial responsibility has been limited to the amount of the forfeited reclamation performance bond. It would not be equitable or appropriate for Wyoming to incur new and substantial liability for this site merely because it separately seeks a limited Agreement. Wyoming's position continues to be that future Agreement State status should not negate or modify NRC's existing Confirmatory Orders related to this site.⁵ NRC should remain

¹ SECY-17-0081 "Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming" NRC ADAMS Accession No ML17087A355).

² 42 U.S.C. § 2021(b).

³ 42 U.S.C. § 2014(e).

⁴ Confirmatory Order NRC ADAMS Accession No ML 071520354.

⁵ See attached April 18, 2017 letter NRC ADAMS Accession No. ML17108A731.

responsible for retaining and funding the remaining reclamation and decommissioning of the site until it is transferred to the Department of Energy. That was the agreement, and both the NRC and Wyoming should see it through to completion.

There are a couple of points raised by NRC staff in making its recommendation that warrant additional comment. NRC staff identified several previous examples where the NRC rejected requests by states or individual licensees for the NRC to retain authority over an individual license (or group of licenses) within a larger set of licenses contained in a category or subcategory of source material or byproduct material. But there are key differences between the ANC site and the examples identified by NRC staff.

First, Oklahoma's proposed Agreement and licensees from Illinois, Massachusetts, and New Jersey all involved financially viable sites. The ANC site has not been financially viable since 1994. Moreover, because Wyoming has agreed to assume regulatory authority over the other five Title II sites, there is little chance that the NRC's retention of authority over the ANC site alone will cause undue confusion for the regulated community or burden NRC resources.

Second, funds for reclamation at the Moab Atlas Site were not exhausted, and likely would have been sufficient to carry out the NRC approved reclamation plan. Conversely, the ANC forfeited reclamation funds along with DOE Title 10 funds, are nearly exhausted, and complete remediation at the ANC site to NRC standards will require an additional \$17.7 million. In addition, unlike Utah, Wyoming has never had regulatory authority over the ANC site, and it is not seeking to renegotiate the limited agreement to avoid the consequences of a bankrupt licensee for which it would otherwise be responsible.

NRC Staff also expressed concern that if the NRC retains jurisdiction over the ANC site, Agreement States may seek to return authority over financially insolvent Title II sites to the NRC. NRC staff pointed to the Sweeney Mill site in Colorado and the Intercontinental Energy Corporation (IEC) site in Texas as examples. In these cases, the states had already assumed jurisdiction over the sites and had sufficient time to set an appropriate financial assurance. For example, Colorado had regulatory authority over the Sweeney Mill for thirty-nine years before the company went bankrupt; and Texas was the regulatory authority when operations at the IEC site commenced. Wyoming has never had regulatory authority over the ANC site and had no opportunity to set the financial assurance for remediation and reclamation. This burden fell solely on the NRC prior to and at the time of forfeiture. Thus, unlike Sweeney Mill and IEC, Wyoming is not seeking to *return* regulatory authority over a site in response to insolvency. The two situations are distinctly different and the NRC's decision here is unlikely to affect how it addresses future attempts to return regulatory authority over a particular site.

I appreciate the opportunity to provide input on this issue, to commend the NRC staff for their hard work, and to concur with the recommendation that the ANC site should remain under the regulatory authority of the NRC. I look forward to continuing our constructive relationship with the NRC as we move toward becoming an Agreement State.

Chairman Svinicki
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Sincerely,



Matthew H. Mead
Governor

MHM:mjm

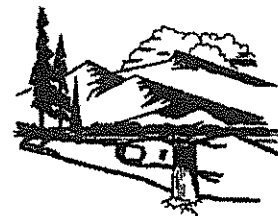
Encl.: Letter dated August 17, 2017 from WDEQ to Daniel S Collins, NRC.

cc: Hon. John Barrasso
Hon. Mike Enzi
Hon. Liz Cheney
Todd Parfitt, Director, WDEQ



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) guidance¹, 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 Order² 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)³ 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

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

² ML071520354

³ Enclosure 1 and 2 of ML012540081

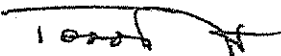
public health and safety was sufficient to comply with NRC regulations. Further, the Commission ruled that at the time of license termination NRC staff would simply confirm that the reclamation was performed as approved and performed reclamation activities protected against significant threats to public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