



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

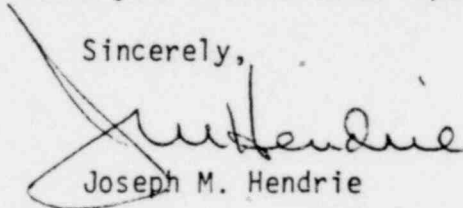
November 7, 1979

The Honorable Charles W. Duncan, Jr.  
Secretary of Energy  
Washington, D.C. 20585

Dear Mr. Secretary:

In accordance with Title III, Section 301 of Public Law 95-604, the "Uranium Mill Tailings Radiation Control Act of 1978," the U.S. Nuclear Regulatory Commission herewith submits to you the enclosed report.

Sincerely,



Joseph M. Hendrie

Enclosure as stated

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TITLE III - STUDY AND DESIGNATION OF TWO  
MILL TAILINGS SITES IN NEW MEXICO

Summary

Title III of Public Law 95-604, the "Uranium Mill Tailings Radiation Control Act of 1978" [the Act], directs the U.S. Nuclear Regulatory Commission [the NRC] in consultation with the Attorney General and the Attorney General of New Mexico to conduct a study to determine the extent to which the Atomic Energy Act of 1954, as amended by Title II of the Act, gives NRC or the State of New Mexico (pursuant to the agreement state program authorized by Section 274 of the Atomic Energy Act as amended) authority to regulate and control all mill tailings located on two named active mill sites in New Mexico. Since these two sites are the only active sites which contain inactive uranium mill tailings piles created solely from Federal contract work and not commingled with uranium mill tailings generated in subsequent commercial operations, the NRC was directed to determine whether such unusual circumstances would affect the adequacy of the Act to require the mill operators to control these mill tailings piles.

After reviewing the question presented by Title III, we have concluded that NRC or State authority under the Atomic Energy Act as amended is adequate to require the owners of the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico, to control all mill tailings at the sites in a manner consistent with public health, safety and the environment. The Atomic Energy Act of 1954, as amended by Title II of the Act, gives NRC or New Mexico (pursuant to Section 274) adequate authority to require operators of active mills, as possessors of licensable byproduct material, to make adequate disposition of all mill tailings at their sites, regardless of whether the tailings piles themselves are characterized as active or inactive. The mill sites named in Title III clearly come within the scope of this authority. The offices of the Attorney General of the United States and the Attorney General of New Mexico agree with this conclusion.

Discussion

The study mandated by Title III addresses what may have appeared to be a potential anomaly in Titles I and II as applied to two particular active sites in New Mexico. These sites -- the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico -- contain the only two piles of uranium mill tailings known to have been created completely under Federal contract and yet to be at actively licensed sites. These tailings piles created as a result of Federal contract work are presently inactive and are not commingled with tailings generated subsequently.

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The question which Title III directed the Commission to study is whether in these unusual cases of inactive piles on active sites, present authority 1/ was adequate to require the owners to clean up and stabilize inactive mill tailings at the above-named active sites.

Title I of that Act was designed to create a "remedial action program" whereby the Federal Government and the State would share 2/ the cost of cleaning up and stabilizing 22 designated inactive sites of the type discussed. In addition, under Title I the Secretary of the Department of Energy has the authority to designate other inactive sites as "processing sites" and thereby make them eligible for the remedial action program. The Act on its face and its legislative history, however, make it plain that active sites are excluded from Title I's purview. Thus, authority to regulate tailings at the Bluewater and Milan sites must be sought in Title II of the Act.

Since the two sites addressed by Title III are active, we find that the Commission has clear authority under the Atomic Energy Act of 1954, as amended by Title II of the Act, to require their owners to clean up and stabilize all tailings at those sites, including tailings piles which are no longer associated with active operations. 3/ The mandate of the Act in this regard is clear.

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1/ "Present authority" refers to NRC or Agreement State authority under the Atomic Energy Act of 1954, as amended by Title II of the Act, or other provision of law.

2/ The Federal Government will pay 90% of the cost of the remedial action, with States paying the remainder. Since the authority of the NRC or the State of New Mexico is adequate to control the tailings at the two sites in question, no federal funds can be provided for remedial action for those sites under this Act. However, we have no objection to the general proposition urged by the Attorney General of New Mexico that appropriate action should be taken to secure federal funds from other sources for the purpose of assisting with remedial action on those sites.

3/ This authority may be relinquished to the State by an agreement pursuant to Section 274 of the Atomic Energy Act as amended by Title II of the Act. Such agreements cannot take effect until three years after the date of enactment. Existing State authority pursuant to the State's general police powers remains in effect during the interim period. The Commission had interpreted the Act as giving New Mexico and the NRC concurrent jurisdiction over mill tailings at the New Mexico sites for the interim period. The Commission requested Congress to amend the Act to eliminate this period of concurrent jurisdiction in Agreement States. H.R. 4249, passed by the Congress but not yet signed by the President, would accomplish this goal by leaving authority over tailings with Agreement States, unless the agreement entered into prior to the enactment of this Act is terminated or the State has not entered into a new agreement at the expiration of the interim period.

There is no indication that Congress intended to exempt inactive tailings piles present at active sites from Title II authority over active sites. We conclude that the original source or present activity of mill tailings piles at active, currently licensed sites has no legal significance. Therefore, the operators of the sites named in Title III may clearly be required under the Act to control all mill tailings at the sites in a manner consistent with protection of public health and safety and the environment.

As required by Title III of the Act, we have reached the above conclusion in consultation with the offices of the Attorney General of the United States and the Attorney General of the State of New Mexico. The Office of the Attorney General of the United States concurs fully in the Nuclear Regulatory Commission's view that adequate authority exists to require clean up and stabilization of all tailings at active sites, regardless of their origin, in a safe and environmentally sound manner. The Attorney General of the State of New Mexico also agrees with this conclusion.

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