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

MEMORANDUM FOR: Commissioner Kennedy

THRU: Lee V. Gossick
Executive Director for Operations

FROM: William J. Dircks, Director
Office of Nuclear Material Safety
and Safeguards

SUBJECT: DELEGATION OF AUTHORITY TO THE DIRECTOR OF NMSS
TO APPROVE ACTIONS UNDER PUBLIC LAW 95-604
(SECY-79-484)

In your memorandum of October 4, 1979, you requested the staff to provide further details on the nature and extent of their activities in concurring with remedial actions proposed by other agencies, such as DOE, under Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, P.L. 95-604. You requested this information as a prerequisite to delegating to the staff the authority to provide such concurrences.

All of the staff actions related to concurrence will be of the same nature as those routinely performed in licensing active mills. The most substantive actions involve the following:

- Approval of specific tailings disposal and remedial action plans at each site.
- Determination that remedial action has been completed at a site according to the approved plans.
- Determination of what subsequent uses of the site are permissible.

These actions and the many other very minor actions required by the Act are described in enclosures 1 and 2.

I should note that we plan to take the exact same approach in evaluating inactive mill tailings sites that we have taken in the case of active operations licensed by the NRC. In approving the remedial actions proposed by DOE, we intend to apply the criteria contained in our recently proposed regulations on uranium milling to the maximum extent practicable. However, these criteria were developed primarily with new

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milling operations in mind. Therefore, certain criteria, such as those requiring isolation of tailings from groundwater and siting remote from populated areas, are difficult to achieve at existing sites to the same extent as is possible with new milling operations.

On the basis that the NRC actions will be essentially the same as those currently taken in the course of routine uranium mill licensing, and that there will be a large number of separate, repetitive actions, I recommend that you concur in the proposed delegation of authority.

(Signed) William J. Dircks

DEC 11 1979

William J. Dircks, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Staff Concurrence Actions
2. Commission Activities Pursuant to Title I

cc: Chairman Hendrie
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne

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STAFF CONCURRENCE ACTIONS

The more substantial staff concurrence actions are briefly described below. Attachment 2 lists a more complete set of the specific concurrences, as delineated in the paper by the Office of the General Counsel on the analysis of Public Law 95-604.

- . Approval of specific tailings disposal and remedial action plans at each site.

The staff will perform evaluations of the proposed actions that are exactly the same as are done in evaluations of active mills. The reviews will focus on proximity of tailings piles to population centers, seepage of tailings wastes and potential contamination of groundwaters, long-term stability of the final tailings impoundments, and potential radiological impacts. We will apply the same criteria used in licensing new mill operations to the maximum extent practicable. However, these criteria were developed primarily with new milling operations in mind. Therefore, certain criteria, such as those requiring isolation of tailings from groundwater and siting remote from populated areas, are difficult to achieve at existing sites to the same extent as is possible with new milling operations. Options for disposal are obviously fewer at the existing sites. For example, new milling operations typically include a liner on the bottom of the tailings impoundment to minimize seepage to groundwater; without moving an entire pile this cannot be done at existing sites.

- . Determination that remedial action has been completed according to plans, for both tailings impoundment covering and stabilization, and clean-up of off-site structures and lands.

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ENCLOSURE 1

The staff will assess the final conditions of the processed site, and determine that the remedial actions have been satisfactorily performed, in accordance with the approved plan. This would involve, for example, making confirmatory radiological measurements following placement of the tailings cover to determine that limits on radon emissions have been met.

- . Determination of what uses of a disposal site (if any) are permissible following remedial action. The land at these sites will be owned and controlled by a government agency, for example, DOE, under provisions of the UMTRCA.

The staff will review any subsequent use of the site proposed by the controlling agency and determine whether release of the site for such use can be allowed with no undue health risks. For example, it may be possible to permit some grazing at certain sites. The staff considers, however, that as a supplementary measure, there should be some continued monitoring and control of land uses at sites to confirm that there is no disruption of the sites due to these uses or other mechanisms, such as human-related activities or natural forces; therefore, conditions would be specified for all sites.

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COMMISSION ACTIVITIES PURSUANT TO TITLE I

(Activities involving issuance of a Commission license are marked **.)

Section 102(a)(1) -- Secretary of Energy designates processing sites within the United States at which remedial action is needed, in consultation with the Commission, EPA, affected States and Indian tribes, and the Secretary of the Interior. The Secretary of Energy determines the boundaries of each site in consultation with the Commission.

Section 103(e) -- Cooperative agreements for remedial action take effect only upon concurrence of the Commission with the terms and conditions thereof.

Section 104(a) -- Commission concurrence is required before the Secretary of Energy may include in a cooperative agreement a requirement that the state acquire a designated processing site as a prerequisite to remedial action.

Section 104(b)(1) -- If the cooperative agreement is to require the State to acquire land to be used as a site for disposition and stabilization of residual radioactive materials from a processing site, the Secretary of Energy must obtain Commission concurrence in a determination that removal of the materials from the processing site is appropriate.

Section 104(e)(1) -- Sale or transfer to the United States of lands or interests acquired by a State pursuant to Section 104(a) or permanent use of such land by the State for park, recreational, or other public purposes requires concurrence by the Secretary of Energy and by the Commission.

Section 104(f)(1) -- The Secretary of Energy's determination that remedial action has been completed, made for purposes of triggering transfer of title to the radioactive materials and lands on which they are disposed to the United States, must have the Commission's concurrence.

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ENCLOSURE 2

** Section 104(f)(2) -- Custody by the Secretary of Energy or other federal agency of land and residual radioactive materials, following completion of a remedial action program, is licensed by the Commission. The Commission may require monitoring, maintenance, and emergency measures to protect public health and safety and to comply with general environmental standards set by EPA.

** Section 104(h) -- Sale or lease by the Secretary of the Interior subsurface mineral rights on lands on which residual radioactive materials are disposed must be licensed by the Commission to insure that the materials will not be disturbed. If disturbance occurs, the materials to be restored (at the cost of the person acquiring the mineral rights), the materials are to be restored to a safe and environmentally sound condition as determined by the Commission.

Section 105(a) -- Cooperative agreements for remedial action with Indian tribes take effect only upon concurrence of the Commission with the terms and conditions thereof. The Commission has a permanent right of entry to inspect a processing site on Indian lands.

** Section 105(b) -- A determination by the Secretary of Energy that residual radioactive materials must be removed from Indian lands and disposed of elsewhere must have the Commission's concurrence. Removed materials must be permanently retained and maintained by the Secretary pursuant to a license issued by the Commission.

Section 108(a)(1) -- Selection and performance of remedial action in accordance with EPA general standards must have the concurrence of the Commission, in consultation with the affected State, or, as appropriate, with the Indian tribe and the Secretary of the Interior.

Section 108(b) -- Recovery of additional minerals from residual radioactive materials requires permission of the Secretary of Energy and the Commission's concurrence.

Section 111 -- The Commission is directed to "encourage public participation" in its activities pursuant to carrying out the provisions of Title I.

Section 114(a) -- Reports to Congress by the Secretary of Energy are to be prepared in consultation with the Commission. The Commission must submit to the Secretary and to Congress that portion of the reports which "relates to the authorities of the Commission under Title II of this Act."

Section 114(c) -- The Administrator of EPA must report to Congress by January 1, 1980, after consultation with the Commission, concerning the location and hazard of uranium mine wastes.

Section 114(e) -- The Commission, in cooperation with the Secretary of Energy, is responsible for systematically documenting and making public (apart from trade secrets and other proprietary information exempt from mandatory disclosure) information obtained from conduct of the remedial actions authorized by Title I.

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