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WORKSHOP ON THE FEDERAL-STATE REGULATION OF URANIUM MILLS

**The Center for Public Issues
University of Denver**

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EXECUTIVE SUMMARY

Background

On November 17-18, 1977, the Center for Public Issues, University of Denver, conducted a Workshop under the sponsorship of the Nuclear Regulatory Commission in Colorado Springs, Colorado. The purpose of the Workshop was to present a forum for discussion among the Nuclear Regulatory Commission and certain state representatives on a variety of issues dealing with federal and state regulation of uranium mills. The chief issues concerned the conduct and preparation of environmental assessment or environmental impact reports associated with the licensing of uranium mills, particularly in those states which have agreement status under the NRC Agreement States Program.

A proposed agreement between the State of Colorado and the NRC which would extend the existing section 274 agreement between NRC and Colorado was also presented for discussion. A copy is attached to the report. A copy of several key questions which guided the meeting is also included.

Representatives from nine Agreement States and four non-Agreement States participated as well as representatives from other federal agencies, the private sector, the public, and the press. A list of participants and observers is attached.

Summary

The substance of the discussions can be summarized within the context of seven key issues which dominated the Workshop. Other less important issues and more specific details will be contained in the full report.

Issue I:

What is the present status of environmental assessment or environmental impact programs specifically dealing with the licensing of uranium mills in Agreement States? How do Agreement States carry out such environmental assessments?

At present, Agreement States prepare no formal environmental assessments to support licensing decisions on uranium mills. That is to say, no specific document dealing with the environmental consequences of the licensing of a uranium mill is prepared by the states. Some Agreement States have had no license applications for uranium mills and thus have developed no programs to do so.

Nevertheless, some environmental assessment activities related to uranium mill licensing are carried out by the Agreement States. Their approach is varied but can generally be characterized as follows.

The general pattern is for the applicant to prepare an environmental report. Such a report, which may be separate or part of the application, is circulated within various state and some federal agencies for review and comment. Such comments become part of the licensing deliberations. Most states (including the three most active states in uranium milling) take positive steps to announce licensing actions and hearings publicly. Environmental questions are dealt with as part of the licensing considerations rather than separately.

All states have administrative procedure acts which require varying degrees of public disclosure, public announcements and publicity. No Agreement State has specific provisions for hearings dealing with environmental effects of uranium mill licensing, but such considerations are included in the licensing process.

- o No state presently has specific regulations which prohibit pre-licensing construction activities during the processing of a uranium mill license.
- o Several states have policies and legislation which subject uranium mill licensing to environmental considerations: i.e., water pollution control, clean air control and related environmental hazards.
- o The states all believe their notification of the public on uranium mill licensing issues is sufficient and adequate.

Issue II:

How do the Agreement States' environmental assessment activities compare in procedure with NRC licensing activities?

- o NRC licensing activities require a specific Environmental Impact Statement under NEPA.
- o NRC prohibits pre-licensing construction activities. A waiver procedure is available for limited construction.

Issue III:

How do the Agreement States view expanding or extending their environmental assessment processes or studies to deal specifically with uranium mills?

- o The States generally viewed such studies as beneficial for the following reasons:
 - The process of conducting such studies may uncover problems which will affect the public health.
 - The process may assist the licensing process by providing a more solid base under licensing approval and subsequent actions.
 - The preparation of a substantive document dealing specifically with an environmental assessment will bring to public view state licensing actions and procedures to the benefit of the general public of the state.

- The process of preparing such an analysis or study will increase the state governments' capabilities to process future applications and to understand better long-range consequences and impacts.
- o Nevertheless, the states felt uncomfortable with procedures which required or encouraged elaborate or extensive preparation of environmental assessment studies - particularly studies of the breadth and scope of an environmental impact statement. They summarized their attitudes as follows:
 - Existing state mechanisms provide adequate protection for the state.
 - Elaborate and more extensive studies of the character of an EIS often include considerations that are irrelevant or unnecessary to the licensing process or the protection of the public.
 - Extensive studies are beyond the financial or manpower resources of the state.
 - Such studies may unduly delay the licensing process.
- o Some states pointed out that their state legislatures had specifically refused to provide legislation for such activities or had repealed legislation regarding environmental assessment activities. For these states to carry out such work would conflict with apparent state legislative intent.

Issue IV:

How do resources (people and money) affect the environmental analysis states currently perform?

- o With the exception of one state, all have significant resource limitations - people and money - that affect licensing time. Most have only one to three people involved directly in the licensing process. Most states rely upon other state agencies whose responsibility is limited and often cursory in nature.

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- o New Mexico indicated that additional resources would be of value; and though their procedures would remain the same, they would be more efficient and save time in processing licensing applications. New Mexico would welcome such assistance as the Intergovernmental Personnel Act provides.

Other states indicated that at their present level of activity and responsibility, additional resources would not be needed. However, expanded responsibilities or increased activities would require additional resources.

- o Because of recent increases in the price of uranium, a significant increase in licensing applications can be expected, especially for reworking of tailings and extraction of uranium from phosphate wastes.
- o Several states show a willingness to seek legislative action to increase licensing fees to cover the cost involved.

Issue V:

Would the states accept technical assistance provided by the NRC to prepare an environmental analysis similar to an EIS?

- o In some states, Arizona, North Dakota, New Mexico and Texas, legislatures have consistently refused to pass any EPA-type of legislation. On the assumption that this represents state policy, these states believe they cannot prepare an environmental assessment similar to an EIS and could not, therefore, request NRC assistance for such a specific assignment.
- o All states, however, welcomed technical assistance from NRC in the general area of developing environmental assessments appropriate to their needs and means.
- o General technical assistance would be welcomed if such assistance did not impede or delay the licensing process.

Issue VI:

Would states prefer to return regulatory authority over uranium mills to the MRC?

- o All Agreement States emphatically wish to retain licensing authority and vigorously opposed the idea of giving it up.

Issue VII:

How do the states view the proposed NRC-Colorado Agreement regarding provision of technical assistance?

- o The states preferred to study the proposed agreement in more detail prior to commenting. Some Agreement States viewed the proposed agreement as a potentially useful vehicle for extending technical assistance relationships if tailored to their individual needs.
- o A question was raised concerning the extent and nature of NRC technical assistance and who (the state or NRC) determines the scope of such assistance. Mr. Ryan (NRC) pointed out that NRC and the state would have program officers working with each other and that generally the NRC program officer would take direction from the state on the extent and nature of the assistance.

Closing

Commissioner Kennedy addressed the Workshop and spoke of the present philosophy of the NRC to work closely in partnership with the states. He indicated his personal dedication to the principle that the states and their citizens are best prepared to determine the nature of their environment. He stressed the need for the federal government to work more closely with the states and suggested that NRC might be able to provide technical assistance to the states to help them continue and extend their efforts to protect the environment. The NRC has a national responsibility for ensuring that the use of licensed nuclear materials is consistent with the need to protect the public health and safety and the environment. By working directly with the states who ultimately produce these materials, the national interest can best be served.

REPORT

Introduction

On November 17 and 18, 1977, the Center for Public Issues, University of Denver, under the sponsorship of the Nuclear Regulatory Commission, conducted a workshop, "Federal-State Regulation of Uranium Mills," in Colorado Springs, Colorado.

The purpose of the workshop was to review and discuss:

- o the NRC licensing process for uranium mills,
- o regulation and licensing of uranium mills in Agreement States,
- o the technical content of the Environmental Impact Statement for uranium mills under the National Environmental Policy Act,
- o state environmental assessments and impact studies related to uranium mill licensing,
- o the Natural Resources Defense Council Inc. vs New Mexico and the NRC lawsuit.
- o the Generic Environmental Impact Statement on uranium mills, and
- o the development of NRC staff and Commission policy on uranium mills.

Workshop participants included representatives from nine Agreement States (Arizona, Colorado, Idaho, Nevada, New Mexico, North Dakota, Oregon, Texas, and Washington), four non-Agreement States (Michigan, South Dakota, Utah, and Wyoming), and staff members of the Nuclear Regulatory Commission. A number of observers from the private sector, state and local government, other federal agencies, the public and the press, was present and participated. A list of attendees is attached.

The role of the Center for Public Issues was to serve as host and moderator and to report on the proceedings. This report is a summary of the proceedings and is the responsibility of John Craig, Center for Public Issues. He and Robert Scheid served as rapporteurs and report editors, assisted by Barbara Hughes, James Geyler, Barbara Hahn, Carolyn Bauer, and Sue Roberts. Copies of this report have been presented to the NRC, the participants and observers, placed in the public document room at NRC, and submitted to the National Technical Information Service, Department of Commerce.

The Center would like to thank the Nuclear Regulatory Commission for their support and cooperation during the planning and conduct of the Workshop, particularly Mr. Robert G. Ryan, Director, Office of State Programs, NRC and Richard Cunningham, Deputy Director, Division of Fuel Cycle and Materials Safety, NRC. NRC in particular should be commended for the efforts they took to assure public participation in the proceedings.

Opening Comments

The Workshop began in general session with comments from various NRC officials and representatives from the states of Colorado and New Mexico.

Mr. Ryan reported that the NRC has been considering the question of the regulation of uranium mills and that the question of environmental impact statements relating to the licensing of such mills was a key question. The Commission was also determining how to defend the Natural Resources Defense Fund suit against New Mexico and the NRC. NRC wished to get state views on these issues and for that reason had brought many of them together in this Workshop. There had been a task force study of the Agreement States program, copies of which will be published shortly. The task force could not agree on recommendations concerning uranium mill regulation. The task force did, however, recommend that the NRC should provide assistance to Agreement States in the preparation of an EIS-type document or an equivalent assessment. Further, NRC would like to help directly the states prepare such studies. One of the purposes of the Workshop was to solicit state views on these questions.

An agreement signed by NRC and the state of Colorado (to be presented for ratification by the Commission and the Governor) was to be discussed at the Workshop (copy attached). This agreement calls for the NRC to provide assistance to Colorado in preparing environmental assessments and for Colorado to use such analyses in their licensing process. Colorado will also request legislation on a fee schedule and will submit an annual report to the NRC. The period of the agreement is for three years.

Robert Fonner, Office of Executive Legal Director, NRC, and Stephen Ellperin, Solicitor, NRC, discussed the suit filed by the Natural Resources Defence Council, Inc. against the State of New Mexico and the NRC. NRDC is

seeking to require an environmental impact statement as part of the license application for the Church Rock uranium mill. Their position has been that this NRC or federal delegation of responsibility to the states is illegal and, therefore, the National Environmental Protection Act is in effect and requires an EIS. The Commission has taken the position that it will argue the case but would prefer to postpone judicial resolution and make its own decision. One of the purposes of the Colorado Agreement is to assist the states in raising their level of environmental assessment capabilities to federal equivalency. The overall question deals with the question of compatibility of state and federal activities as defined by the Atomic Energy Act and the delegation of responsibility to the states by the Federal government. Should NRDC win the case, the states and/or NRC would probably be forced to require a full EIS on uranium mills. Several of the state representatives voiced concern about having to assume the responsibility for conducting a full EIS.

Richard Cunningham presented the process through which NRC conducts EIS's in non-Agreement states.

Albert Hazle, Director, Radiation and Hazardous Wastes Control Division, Colorado Department of Health, described Colorado's program under the Agreement States' program.

Theodore Wolfe, Radiation Protection Section, Environmental Improvement Agency, New Mexico, described the New Mexico program and presented a letter from the Governor commenting on the Agreement States' program. Copies of both are attached. He pointed out that New Mexico wished NRC to defend the NRDC case to assure that the states retain authority for environmental assessments in mill licensing. Mr. Wolfe also commented on their needs for NRC assistance which are discussed below.

Each state, both agreement and non-agreement, presented short comments and general remarks which are incorporated further in the report.

The Workshop divided into two working groups to discuss the issues within the context of a series of questions prepared for it. At these sessions the observers had an opportunity to present comments. The following day the Workshop met again and working group reports were presented and commented upon. Commissioner Kennedy presented concluding remarks.

Background

Under the Atomic Energy Act of 1954 Congress assigned to the AEC the responsibility for regulating private activities under a system of licenses to protect the public from radiation. Section 274 of the Act was enacted in 1959 to recognize the interests of the states in this regulatory process and provide a mechanism for states to enter into formal agreement with the AEC/NRC to assume regulatory authority over certain classes of nuclear material. To date 25 states have entered into such agreements with NRC.

Since 1959 the range of interests and responsibilities of the states in nuclear matters has expanded greatly. The governors of these Agreement States and certain non-Agreement States have indicated a desire for a greater role in enforcing and monitoring federal standards and in assessing, measuring, and investigating the environmental effects of nuclear development.

The Agreement States' program has accomplished the Congressional intent of Section 274 by giving to the Agreement States greater responsibility over licensing of nuclear materials. Here the federal government has divested itself of exclusive authority to control certain classes of radioactive material. Further, it involves no federal funding for the operation of state programs. NRC thus has sought to work with the states as partners in these matters and, over the years, the states, assisted by training opportunities provided under the program, have developed increased capabilities in both the licensing process and environmental assessment, monitoring and other technical areas.

Of current interest is the question of extending the authority of Section 274 to permit the states to enhance their ability to undertake additional responsibilities. One major area of consideration deals with environmental assessment and related environmental impact studies associated with the licensing of uranium mills in Agreement States.

Currently there are nine operational mills in the Agreement States of Colorado, New Mexico, Texas, and Washington, and eight in the non-Agreement States of Utah and Wyoming. Applications for new mill licenses are pending or are expected in both Agreement and non-Agreement States.

At present NRC prepares an environmental impact statement for mills located in non-Agreement States and on Federal lands in Agreement States, since licensing of such a facility is a federal action and such action falls under Section 102 of the National Environmental Protection Act. In Agreement States an EIS is not prepared because licensing is a state function. The Agreement States, however, do conduct environmental analyses according to their various state laws.

There have been a number of suggestions that NRC reassert its authority in Agreement States to perform EIS's insofar as these states do not have the resources to carry out adequate environmental assessments. At present a suit is pending against the State of New Mexico and the NRC by the Natural Resources Defense Council which seeks to reassert federal responsibility for preparing EIS's in the uranium mill licensing process.

The purpose of this Workshop was broadly set to examine current state practices in the process of preparing environmental assessments compatible with federal practices and to assess their attitudes regarding reassertion of federal control. In addition, a model agreement, drafted by NRC and the State of Colorado to broaden the existing NRC-Colorado Agreement, was reviewed and discussed. The information gathered from the states and the public at the Workshop is intended to provide guidance to NRC in their policy deliberations and to assure the states' voice in the policy deliberations.

A Task Force Report on the Agreement States' Program, presently in draft (NUREG-0299-Office of State Programs, NRC) provides further details on these issues.

Eight questions had been prepared by the NRC staff prior to the Workshop to guide the discussions during the working group meetings. These questions were somewhat modified as the Workshop progressed. The original questions follow.

Question 1. Setting aside the legal and compatibility requirements for Agreement States, would an environmental analysis enhance the licensing process for uranium mills in Agreement States (including both the technical analysis and public participation in the licensing process)?

- Question 2. How do the Agreement States currently go about preparing environmental analysis prior to licensing uranium mills? How does this compare to the environmental impact statement process NRC used on its uranium mills licensing actions in non-Agreement States?
- Question 3. What is the administrative procedure the States currently have in place for dealing with environmental analysis - publication of draft for public comment? Opportunity for hearing? How are comments or disputes resolved? How is the environmental analysis brought to the attention of the decision makers? How is it used in the licensing process?
- Question 4. If the States do not currently have administrative procedures, would it be difficult to put them into place?
- Question 5. How do resources (people and money) affect the environmental analysis States currently perform? Does the resource issue affect the technical aspects of the States' environmental analysis?
- Question 6. Would the States accept technical assistance provided by NRC to prepare an environmental analysis similar to an NRC EIS?
- Question 7. As an alternate to the States preparing an environmental analysis comparable to an NRC environmental impact statement, would the States prefer to return regulatory authority over the uranium mills to the NRC?
- Question 8. How do the States view the proposed NRC-Colorado Agreement regarding provision of technical assistance?

Regarding Question 7, one participant commented that the question appeared to imply a "threat" that if Agreement States did not prepare an environmental analysis comparable to an NRC environmental impact statement, NRC would attempt to reassert regulatory authority over the uranium mills in these states. NRC participants denied that this was their intent or the implication of the question, and the words "As an alternate...to an environmental impact statement" were removed from the question.

Discussion of the Issues

During the discussion of the questions listed above it became possible to resolve the concerns of the meeting into seven major issues. These are discussed individually in the sections that follow.

Issue I: What is the present status of environmental assessment or environmental impact programs specifically dealing with the licensing of uranium mills in Agreement States? How do Agreement States carry out such environmental assessments?

At present Agreement States prepare no formal environmental assessments to support licensing decisions on uranium mills. Washington State, however, has enacted NEPA-type legislation and will require state EIS's effective January 1, 1978. No fee legislation has been enacted to support this effort. In the remainder of the states no specific document dealing with the environmental consequences of licensing a uranium mill is prepared by the state. In several states (Arizona, North Dakota, New Mexico and Texas) legislatures have specifically refused to enact legislation or have repealed legislation providing for extensive environmental assessments (similar to EIS's).

Some Agreement States (Arizona, Idaho, Nevada, North Dakota and Oregon) have had no license applications for uranium mills and thus have not developed programs to handle them.

In the remainder of the Agreement States (Colorado, New Mexico and Texas) licensing of mills is active and some environmental assessment is carried out.

In Colorado the applicant files an Environmental Report with the Colorado Department of Health. After review by the Radiation Control Uranium Mill Licensing Staff, those portions requiring outside technical talent or of concern to other state and federal agencies are identified. The appropriate agencies are asked to review these portions and comment in writing. There is extensive coordination of these comments among the agencies, the Department of Health and the applicant. Finally each reviewing agency is asked to render a final determination of approval or disapproval of the application and its attached environmental report. A decision is then made by the Department of Health as to issuance of the license and any appropriate

controls. Appeal is possible. Colorado requested and is receiving an EIS prepared by the Forest Service, USDA on the Homestake site as it is on federal lands.

The situation in New Mexico and Texas is similar. The applicant submits an environmental report to the Environmental Improvement Agency in the case of New Mexico or the Department of Health in Texas. These agencies coordinate with appropriate state and federal agencies, review comments with the agencies and applicant and decide on licensing and the nature of license controls. All three states have policies and legislation which subject mills to environmental considerations; i.e., water pollution control, air quality control, and related considerations.

None of the states (Colorado, New Mexico or Texas) prepares a formal environmental assessment document that would be available to the public. Nor do they have provision for hearings dealing with environmental aspects of uranium mills. The environmental aspects are included in the licensing process. They do however provide for varying degrees of public disclosure, announcement and publicity for the licensing process. Colorado holds no hearings during the licensing process. In New Mexico a public notice of application is made and there are various news releases during the licensing process. Public participation is welcome but no hearings are held. In the future the New Mexico Environmental Improvement Agency will prepare a licensing summary to contain dose assessment, tailings management program, other effluent control systems and the environmental monitoring program. This summary will be available to the public.

In Texas the Department of Health holds no hearings on the license action. In the future, Texas plans to prepare in written form their environmental analyses. Public hearings are held in connection with uranium mines and mills by the Texas Department of Water Resources and the Texas Railroad Commission. The states all believe their notification of the public on uranium mill licensing is adequate.

At present none of the Agreement States has regulations to prohibit construction activities during the processing of uranium mill licenses.

Issue II: How do the Agreement States' environmental assessment activities compare in procedure with NRC licensing activities?

The NRC licensing process is presented in detail in attachment 3. Upon receipt of an application a notice is placed in the Federal Register and a draft EIS is prepared, generally by one of the National Laboratories under the guidance of NRC. This EIS is a detailed statement of the impact of the proposed mill upon the environment and includes the following considerations:

- Radiological
- Air Quality
- Water Quality
- Land Use
- Vegetation and Wildlife
- Socio-Economics

An assessment of alternatives for tailings disposal and mill siting is made, and, finally, a cost-benefit analysis is made. Throughout the analysis, not only mill operations but also possible accidents and decommissioning are considered. The analysis requires a large team of experts devoted solely to that purpose. In the past these statements have cost as much as \$250,000 and taken up to two years. The NRC expects that future EIS's will require about one half man year of staff time, \$100,000 for contracted work, and about 9 months to complete. Following completion of a draft statement, the NRC requests comment from the public and appropriate government agencies. Upon resolution of the comments a final statement is prepared. Concurrently with the preparation of the EIS a safety evaluation is made. This covers plant safety organization, safety procedures, safety design features, monitoring, and tailings pond dam safety.

Throughout both processes notices are placed in the Federal Register at appropriate times. While the licensing process is underway the NRC prohibits any construction activities. A waiver procedure is available for limited construction.

The NRC is currently preparing a Generic Environmental Impact Statement on uranium milling. This effort was initiated in response to uncertainties

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regarding the health impacts of radon, the long term disposition of tailings, and financial surety arrangements. The statement will treat in detail:

1. Radiological and environmental impacts to the year 2000,
2. Technical criteria for tailings waste management and disposal, and
3. Necessary regulation or statute changes for improved mill licensing procedures.

The NRC expects a draft EIS to be available by August 1978 and a final statement by about April 1979.

Issue III: How do Agreement States view expanding or extending their environmental assessment processes or studies to deal specifically with uranium mills?

o First the States generally viewed such studies as beneficial for the following reasons:

- The process of conducting such studies may uncover potential problems, particularly local ones, early in the process which might adversely affect the public health.
- The process may assist the licensing process by providing a better and more solid basis for licensing approval and reduce the level and number of subsequent challenges and questions.
- The preparation of a substantive document dealing specifically with an environmental assessment will bring to public view and attention state licensing action and procedures and provide a substantive basis and more information for public comment.
- The process of preparing such an analysis or study will increase the states' capabilities to process future applications and to understand better the consequences and impacts. Such a process will also increase the technical capabilities of the staff and policy makers involved as more data and knowledge is acquired.

- Because some states have had bad experiences extending existing procedures would possibly prevent their reoccurrences and restore some measure of public confidence.

In general, most states believed that at their present level of activity their environmentally oriented studies related to mill licensing were adequate and sufficient. They recognized that there were soft spots in some of their procedures but felt they would continue to develop their skills and capabilities as time went on.

The states felt uncomfortable with procedures which would require or encourage elaborate or extensive preparatory studies comparable or equal to a Federal Environmental Impact Statement.

Some states commented that the NEPA/EIS process is too elaborate and generates data and information not useful or necessary to the licensing process. While this additional information is often useful to other government agencies, the cost of such elaborate studies is in excess of what the states can afford. They pointed out that such assessments must be highly focussed to be relevant, useful, and economically practical. The MRC pointed out that EIS's have undergone change in recent years and have become leaner and more relevant.

There was some concern that a substantial increase of environmental assessment activity would remove state authority in the process. That is, such broader programs might subject the states to Federal control, producing the opposite effect from the Agreement programs' intentions - reasonable local autonomy. Wyoming (a non-Agreement State) voiced strong opinion that local control over such studies is more responsive to the State needs, and is accomplished at lower cost with less bureaucratic red tape.

The States also suggested that extending environmental assessment programs, either from internal state action or outside through Federal pressure, would complicate unnecessarily or extend the licensing process without measurable benefit. One participant voiced the opinion that there is as yet no good measure of how comprehensive an assessment is needed. Faced with the prospect of an increased need for new mills and a projected increase in licensing applications, the states believed expanding the scope

~~and nature~~ of environmental assessment beyond reasonable limits could seriously impair the licensing process and cause delays.

As noted below, some state representatives pointed out that their state legislatures had specifically refused to provide legislation supporting extensive environmental assessment activities in general and that one state had repealed such legislation. Efforts by executive branches of these governments to broaden the scope of environmental assessment activities could be interpreted as disregarding the intent and wishes of these legislatures.

Issue IV: How do resources (people and money) affect the environmental analysis the Agreement States currently perform?

o With the exception of one state, all have significant resource limitations - people and money - that affect licensing time. Most have only one to three people involved directly in the licensing process. Most states rely upon other state agencies for comment and input into the decision. However, these state agencies often have limited responsibilities and are also pressed for resources so their reviews may be cursory and lack depth.

o New Mexico indicated that additional resources would be of value. While their procedures would remain essentially the same, they would be more efficient and save time in processing licensing applications. New Mexico recognizes some limitation of capabilities in their current situation and would welcome cooperation with the Federal Government. New Mexico, however, believes their present program to be an effective one, and does not wish their desire for additional cooperation to be construed as indicating that their present program was not competent to protect the interests of New Mexico's people.

Other states indicated that at their present level of activity and responsibility additional resources would not be needed. Three states (Oregon, Nevada and North Dakota) have had no mill licensing applications and, therefore, have not yet been confronted with the question. Arizona does not presently have statutory authority to do an environmental analysis on mill applications and therefore present resources are adequate. They would have to build a capability when and if the problem arose.

However, expanded responsibilities or increased activities would require additional resources. Several states anticipate such increased activities because of the increasing price and demand for uranium and potentially new sources, such as reworking of tailings and extraction from phosphates and oil-well brines. Texas, which took the position that additional resources are not presently needed, would need additional resources if expansion in the state took place. However, they pointed out that their technical quality would not be increased by additional resources, but rather by their administration capabilities.

Several states indicated a willingness to seek legislative action to increase licensing fees to cover costs of increasing their activities. However, some were skeptical that increased fees which would go to the general treasury would add to their resources.

Issue V: Would the states accept technical assistance provided by the NRC to prepare an environmental analysis similar to an EIS?

The State of Colorado and the NRC are currently in the process of approving an agreement whereby the NRC will provide assistance to the state in the preparation of a detailed environmental analysis (see attachment 1). The state clearly wishes to improve the environmental analyses on which it bases decisions on mill licensing. Under the agreement Colorado is committed to use the data from NRC as a decision making tool. In the case of the Homestake mill, Colorado requested (and is receiving) a full scale federal EIS, based on the fact the site is on federal land.

In Washington, state environmental impact statements will be required after January 1, 1978. In order to prepare these, the state will desire federal technical assistance on the order of that contemplated for Colorado. The representative from Washington indicated they would study the proposed Colorado agreement as a vehicle for the provision of such assistance.

Idaho expects several license applications in the near future and is currently asking the NRC for technical assistance in the processing of these applications. In general, all states welcomed technical assistance from

the NRC to develop environmental assessments appropriate to their needs if such assistance did not impede or delay the licensing process. New Mexico requested that during the provision of such aid the NRC provide for a liaison person at the New Mexico Environmental Improvement Agency.

In the State of Texas the legislature has consistently refused to pass NEPA-type legislation. Although Texas would accept technical assistance from the NRC, it could not, under present regulations and apparent legislative intent, require an environmental analysis similar to a NRC EIS. Therefore, it could not request or accept NRC assistance for such a specific assignment. Other states (Arizona, New Mexico and North Dakota) have similar policy restrictions.

Issue VI: Would the Agreement States prefer to return regulatory authority over uranium mills to the NRC?

All Agreement States emphatically wished to retain licensing authority and vigorously opposed the idea of giving it up. The following prepared statement of Texas is typical of the responses of the states.

"The State of Texas would not voluntarily return regulatory authority over uranium mills to NRC. Furthermore, the Texas Radiation Control Branch (of the Department of Health) would oppose any attempt by the NRC to reassert regulatory authority over uranium mills in the State of Texas by modification of the Agreement between the USAEC (now USNRC) and the State of Texas, by regulation, or by other means. In the absence of a clear demonstratable deficiency on the part of the Agreement States, and in our case the State of Texas in particular, in the regulation of uranium mills, we can see no justification or basis for the NRC trying to make the regulation and licensing of uranium mills an exclusively Federal authority."

The State of New Mexico gave the following reasons for the retention of licensing authority.

1. The New Mexico licensing staff is close to the site in question.
2. The inspection staff is immediately and constantly available.

3. The state has authority over mine discharges while NRC does not.
4. The New Mexico Environmental Improvement Agency is responsible for chemical contamination problems; the NRC is not and would rely on state authority.
5. In order to reassert authority the NRC would have to demonstrate that the state was not adequately protecting the health and safety of its citizens. New Mexico believes it is properly discharging this responsibility.

Issue VII: How do the states view the proposed NRC-Colorado Agreement regarding provision of technical assistance?

The proposed agreement between the NRC and Colorado is presented in attachment 1. The states generally preferred to study the agreement in more detail prior to commenting. Some of the states, in particular Washington and New Mexico, viewed the proposed agreement as a potentially useful vehicle for extending technical assistance relationships if tailored to their individual needs.

Texas raised a question about the extent and nature of NRC technical assistance and who (the state or NRC) determines the scope of that assistance. Mr. Ryan (NRC) pointed out that NRC and the state would have program officers working with each other and that generally the NRC program officer would take direction from the state on the extent and nature of the assistance. Texas pointed out that its legislature has refused on several occasions to pass NEPA-type legislation. If the Agreement were to force a full scale environmental assessment similar to an EIS, it would put the Texas Department of Health in the position of doing what the legislature had clearly refused to enact.

The State of Utah, a non-Agreement State, said they had considered Agreement State status but had three concerns:

1. They would have to adopt a full scale EIS procedure.
2. They would lose technical help from NRC and, thus, there would be substantial budgetary impact.

3. There would be large manpower increases.

The proposed Colorado-NRC Agreement, if tailored to Utah, would alleviate these concerns because of the provision of federal technical assistance. As a result, they will reconsider Agreement State status and probably recommend it. Wyoming, also a non-Agreement State, indicated a similar situation.

Both Washington and Oregon felt the proposed agreement to be unnecessary. They interpret the original agreement (Agreement State) to cover this type of technical assistance.

Most of the states were emphatic that technical assistance and increased environmental analysis not retard the licensing process.

Other Issues:

In addition to the main issues discussed above, there were several points made that deserve attention.

Wyoming is currently considering Agreement State status. One of its representatives at the meeting suggested that NRC hold workshops or discussion groups to help the states understand and use the EIS and its accompanying data.

The NRC was questioned concerning funding support for the Colorado Agreement. The NRC representatives agreed that reprogramming of existing NRC funds would satisfy short term needs, but that ultimately a budget line item would be necessary.

One of the New Mexico representatives questioned the lack of any time frame for completion of the environmental analysis in the Colorado agreement. Mr. Ryan pointed out that this would be difficult until they had some experience. After two or three cases a time factor could be introduced.

Several questions were asked concerning uranium mines and whether NRC includes them in an EIS. The NRC does not regulate mining activity. However, if the mine is close to the mill and involved in mill considerations, the NRC would include its operation in the EIS.

ATTACHMENT A

A Cooperative Agreement Between the U.S. Nuclear Regulatory Commission and the State of Colorado, in accordance with section 274 of the Atomic Energy Act, as amended, concerning Uranium Mills, Mill Tailings and Related Issues.

Because the State of Colorado, by virtue of its agreement with the Nuclear Regulatory Commission under section 274 of the Atomic Energy Act, entered into on the 1st day of February, 1968, has assumed responsibility for and exercises regulatory control over the licensing of uranium mills within its borders;

Because the State of Colorado wishes to improve and perfect the environmental analysis on which it bases decisions having to do with uranium mill licenses and other related regulatory activities;

Because the U.S. Nuclear Regulatory Commission, through its exercise of licensing authority over uranium mills in the so-called non-Agreement States, and through its preparation of the Generic Environmental Impact Statement on uranium mills now in preparation, has developed a fund of knowledge, data and expertise which has applicability to the State of Colorado;

Because the State of Colorado has requested the Nuclear Regulatory Commission's assistance in assessing the environmental impacts of proposed new uranium mills, mills currently operating but subject to license renewals, and major modifications of existing mills within its borders;

Because the sharing of data, information and expertise between the U.S. Nuclear Regulatory Commission and the State of Colorado is mutually advantageous;

Now, therefore, the U.S. Nuclear Regulatory Commission (hereinafter "NRC"), in furtherance of its statutory responsibilities and authority under section 274 of the Atomic Energy Act, as amended, and the State of Colorado, (hereinafter "State") in furtherance of its statutory responsibilities and its desire to protect the public health, safety and the environment, and under authority of section 25-11-102 CRS 1973, as amended, agree as follows:

1. Beginning immediately, upon each request from the State, NRC will undertake to assist the State in assessing the likely environmental impacts and consequences flowing from the construction or operation of any new uranium mill within the State, any major modification of an existing mill or any operating mill which may be the subject of a license renewal application. This analysis will take the form of a staff report from NRC to the State documenting that assessment.
2. The procedural aspects of the uranium-mill licensing process within the State shall continue to be the responsibility of the State, and this agreement in no way alters or diminishes that responsibility. The State, however, will distribute any report prepared by NRC under this agreement to the appropriate governmental agencies, and further will make such report

available for public comment under its own administrative procedures. The State will be responsible for conducting any public hearings concerning such report that may be required in connection with any future licensing action. NRC will supply expert witnesses for such State hearings to explain, substantiate or defend the NRC report and its conclusions or any portion of the environmental analysis provided by NRC to the State under this agreement as may be necessary in any hearing or action in State courts.

3. Upon the signing of this agreement, the State shall furnish NRC with a written schedule of known or likely uranium mill or related licensing actions which may come before the State or any of its agencies. The schedule shall be updated from time-to-time during the term of the agreement as circumstances warrant.
4. The State shall make a formal written request for NRC assistance in each future uranium mill or related licensing case, specifying the particular assistance sought and laying out a proposed timetable for such assistance.
5. The State stipulates that it will use any environmental analysis (or report containing such analysis) supplied by NRC under this agreement as a decision-making tool in its licensing process and, to the extent that such is consistent with State law, the State shall not issue permits for the construction of a uranium mill/mine complex.

or a material license for a uranium mill, or a renewal of such license until the environmental analysis the State has requested from NRC has been completed.

6. Once an individual licensing case is identified, NRC and the State will each appoint an individual project manager who will jointly establish a mutually agreeable work schedule, taking into account the timing of licensing actions, statutory timing requirements and other workload commitments. The project managers will also clearly identify those areas of environmental analysis which will be undertaken by NRC and those which will be performed exclusively by the State. The State will supply NRC with copies of all material which is prepared exclusively by the State; NRC may incorporate in its report material supplied to it by the State under this section. Both parties will exercise good faith efforts to coordinate their activities and to inform each other as the work progresses. Draft reports and schedule changes will be exchanged expeditiously. NRC intends to make all schedules, draft reports and other documents arising from this agreement available to the public through its public document rooms.
7. At least annually for the term of this agreement, the State shall supply NRC with a written report concerning uranium mill operations within the State, highlighting the problems of an environmental or regulatory nature encountered and an account of any remedial action taken by the State. NRC reserves the right to publish such report as a NUREG document.

8. The State intends to develop in the immediate future proposed legislation requiring appropriate State licensing fees for uranium mills within its jurisdiction.
9. NRC undertakes to keep the State informed of all new information, technological innovations and data of a non-proprietary nature concerning uranium mills and tailings, including but not limited to the drafts and final versions of the Generic Environmental Impact Statement on uranium mills now in preparation. NRC will stand ready to assist the State in every proper fashion with information and technical support.
10. Nothing in this agreement is intended to restrict or alter the statutory authority of either NRC or the State.
11. This agreement shall go into force upon acceptance by NRC and the State and shall run for a term of three years from the date of such acceptance.

Richard D. Lamm,
Governor of the State
of Colorado

Joseph M. Hendrie,
Chairman, U.S. Nuclear
Regulatory Commission

Date _____

Date _____

Initialed on behalf of U.S. N.R.C. by Robert G. Ryan,
Director of Office of State Programs (subject to ratification
by NRC and subject to resolution of the issue of funding)

_____; and on behalf of the State of Colorado by
Robert D. Siek, Deputy Director, Department of Natural Resources
(subject to acceptance by the Governor of the State of Colorado)
_____; and Albert J. Hazle, Director, Radiation & Hazardous
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this 17th day of November, 1977, at Colorado Springs,
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