



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

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MEMORANDUM FOR: Howard K. Shapar, Executive Director  
Office of the Executive Legal Director

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

SUBJECT: REQUEST FOR A LEGAL OPINION

The purpose of this memo is to request from the OELD a legal opinion concerning uranium mill tailings in locations away from licensed uranium recovery facility sites.

As a result of a joint study by the NRC, EPA, Tennessee Valley Authority (TVA), and the State of South Dakota related to the decommissioning of the Edgemont Uranium Mill, the NRC has obtained information concerning high radiation exposures to the occupants of a residence in Edgemont, South Dakota. The radiation exposures were due to the radon emitted from materials used as fill around the basement walls and under the basement slab in the residence and which are believed to be uranium mill tailings. The exposure levels were high enough to warrant evacuation of the residents from their home. It is most likely that these tailings were removed from the uranium mill at Edgemont while it was in active operation prior to 1974.

Although the Edgemont uranium mill was inactive since 1974, it was not included for remedial action under Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 because the millsite and tailings piles are under an active NRC license. The Source Material License SUA-816, and responsibilities associated with it, were assumed by the TVA after it purchased the site in August 1974. In March 1979, the TVA submitted a plan for decommissioning the millsite and tailings. The NRC is currently preparing an Environmental Impact Statement in support of a licensing action to authorize the decommissioning of the millsite. However, the decommissioning plan does not provide for the cleanup of tailings at "offsite" locations, i.e., locations outside of the licensed millsite boundaries which have been contaminated with tailings windblown or physically removed from the millsite. Although the cleanup of offsite tailings locations would appear to be an appropriate part of the decommissioning, the TVA has thus far declined to assume this responsibility/liability. The legal basis for TVA's decision appears to be sound.

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Recent information indicates the Edgemont off-site contamination situation is not an isolated case. An EPA report we were recently made aware of concerning gamma surveys conducted during 1971-72 indicates that 82 communities in 10 western states may have greater than 1300 locations with elevated radiation levels due to tailings. The responsibility is not clear for all of these offsite tailings locations. We have attempted to get assistance from the DOE in this matter, but they have balked absent a definitive statement concerning our legal authorities to require mill operators to take action or to take actions ourselves in these contamination cases. It is very likely that because Edgemont is not an isolated case that specific legislation will be needed to establish a remedial action program.

The question(s) for which a legal opinion is required can be stated as follows:

- "(1) What is the role of the NRC in the control of tailings in offsite locations, e.g., could the NRC staff conduct monitoring and measurement programs utilizing NRC owned equipment, and
- (2) Does NRC have authority to order either present or past licensees to clean up 'offsite' tailings contamination from uranium milling, (a) with respect to tailings that were moved offsite prior to the enactment of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), and (b) with respect to tailings that were moved offsite after the enactment of UMTRCA. Or, in other words, what is the relationship that should exist between the conduct of a past or present licensee and the presence of offsite tailings contamination that would support an order to the licensee to conduct an offsite cleanup program."

As a result of the uncertainty of our authorities and because of the immediacy of the potential health problems and the magnitude of the required evaluation program, NMSS is preparing a Commission Paper intended to clearly establish what our role should be. I request that OELD provide the legal opinion within two (2) weeks.

*for* *1st John G. Davis*  
William J. Dircks, Director  
Office of Nuclear Material Safety  
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