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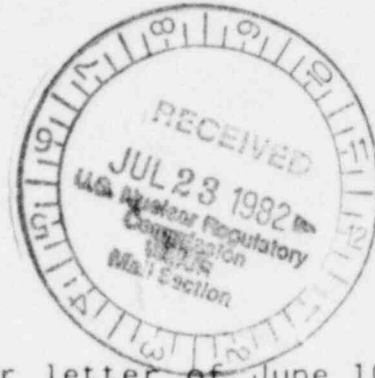
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July 19, 1982



Mr. Walter C. Ackerman  
Department of Environmental Quality  
401 West 19th Street  
Cheyenne, WY 82002

Dear Walt:

I was very much surprised by your letter of June 10, 1982 relating to (1) Federal-American Partners' Tailings Pond 1 and (2) to Federal-American Partners' proposal for in-pit tailings disposal. As you are aware, Federal-American Partners has applied to the Nuclear Regulatory Commission for a renewal of its source material license. That application includes a proposal to use the two existing tailings ponds as evaporation ponds in connection with the operation of the mill. It also includes a proposal to use the Sagebrush pit for subsurface disposal of tailings produced by future operation of the FAP mill. The Nuclear Regulatory Commission is about to distribute a draft environmental impact statement relating to the FAP application on which you will have ample opportunity to comment. I am surprised by your letter for the following reasons, among others:

(1) As you know, since the adoption of the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA") (Pub. Law 95-604, 92 Stat. 3021), the Nuclear Regulatory Commission has specific authority to and is required to regulate sites at which tailings are deposited, to impose reclamation standards with respect to such sites and to provide for the ultimate transfer of title to such sites to the United States (or, under certain circumstances, to the state in which the site is located). 42 U.S.C. § 2014. The licensing procedure includes an assessment of the impact of the tailings area on groundwater and the Nuclear Regulatory Commission through their staff and with the assistance of a highly respected hydrological consultant have made such an assessment.

(2) The UMTRCA provides for cooperative agreements to be entered into between the states in which tailings sites are located and the NRC. No such agreement presently exists in Wyoming. The Act also provides that after November 8, 1981, except to the extent that such an agreement is entered into, that state control over tailings is, in effect, pre-empted by the federal law. 42 U.S.C. § 2021(h)(1).

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(3) The Wyoming legislature has specifically provided that the Department of Environmental Quality "may not spend any appropriated funds for activities pertaining to uranium mill tailings preempted by the federal nuclear regulatory commission unless an agreement with the commission has been approved by the legislature." Wyo. 1982 Session Laws, ch. 70, § 020.

(4) I realize that in the past your office has claimed authority to regulate tailings disposal notwithstanding the fact that it is not a mining activity but milling, apparently on the theory that it is ancillary to mining. On the basis of paragraphs (1) through (3) above, it appears clear that such authority, absent a cooperative agreement with the NRC, does not presently exist. We assume that you will have an adequate opportunity to comment on the NRC's draft EIS when it becomes available. It is our understanding that the Division of Water Quality, which should be the division within DEQ primarily concerned with assessing the impact on water quality, intends to issue a permit relating to the tailings areas in the immediate future.

(5) Your letter completely ignores the facts with respect to Tailings Pond No. 1 when it refers to "long-known groundwater contamination occurring for Tailings Pond No. 1" which can no longer be tolerated. We addressed this issue at length in prior reports relating to Tailings Pond No. 1 and in connection with Tailings Pond No. 2, which involves a similar problem as to alleged groundwater contamination. The reports of Dames & Moore ("D&M"), which your office essentially chooses to ignore, made it clear that the water being contaminated was contaminated prior to uranium mining, the contamination was localized, the water in the perched aquifer exists in part because of seepage from the tailings pond, is of limited areal extent, and had no prior or foreseeable future use.

The D&M reports state that there are two water-bearing zones underlying Tailings Ponds 1 and 2 consisting of a perched groundwater zone in the Upper Wind River formation and an unconfined aquifer in the Lower Wind River formation. These two water-bearing zones are separated by a series of claystone interbeds not less than twenty feet thick. The D&M report includes several logs relating to relevant drilling of the area showing the existence of the claystone interbed. Dames & Moore concludes that the tailings ponds have slightly degraded groundwater quality in the perched water zone, but that such water zone is not a usable source of groundwater because of its limited areal extent and the availability of a better aquifer in the immediate area. Such water zone is not known to be used as a source of water within five miles of the millsite of Federal-American Partners. Based on data available from wells in the immediate area of Tailings Pond No. 2 which have been monitored since 1963, Dames & Moore concludes that the claystone interbeds have effectively prevented

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contamination in the perched zones from entering the unconfined aquifer. In the twenty years that have elapsed during the monitoring period, there has been no increase of the concentrations of radionuclides in the unconfined aquifer, suggesting that the unconfined aquifer has not been affected by seepage from either tailings pond. The report concludes that "[T]he claystone effectively prevents seepage from the tailings ponds from reaching the unconfined aquifer."

For similar reasons, there is no need to backfill and line the proposed in-pit subsurface disposal area. The water in the perched aquifer at the Sagebrush pit has always been contaminated because of the ore zone. The contaminated waters do not move to any significant extent because the beds in the immediate area are tight. The plan for tailings disposal in the pit provides for drainage of the tailings, with the moisture content being pumped out and evaporated, thus reducing the water pressure of any potential seepage from the tailings. The significant facts, however, are as follows:

(a) The water in the perched aquifer was not previously usable, has limited areal extent, and any contamination will be localized to the pit area.

(b) As in the case of Tailings Ponds 1 and 2, claystone interbeds from 20 to 40 feet thick underlie the disposal pit, as has been established by the 800 or more holes that have been drilled through the claystone in the immediate area. There are at least two monitoring wells in the immediate area which penetrate the lower aquifer and demonstrate that it has not been affected by the radon 226 or other contaminants in the ore zone above.

(c) Contrary to Mr. Kearney's review, the foregoing is all substantiated by the large volumes of data gathered by field investigations and subsequent analysis over several years. This data has been independently evaluated by three consultants and two other regulatory agencies. Dames & Moore undertook mathematical modelling by computer, which further substantiates the conclusions set forth above. The NRC and its outside consultants are in agreement with these conclusions.

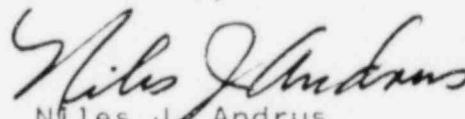
(6) FAP, as you know, is a partnership consisting of Federal Resources Corporation and American Nuclear Corporation, both of which were organized and publicly-financed during the 1950s. FAP discovered significant quantities of uranium and obtained a contract to sell uranium concentrates to the Atomic Energy Commission, which at the time was the sole purchaser of uranium concentrates. FAP commenced milling operations in 1960 and for several years the AEC was its only purchaser. The production of

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these concentrates was an essential part of the effort of the United States to maintain a nuclear deterrent and such production made a significant contribution to the national security of this country. The tailings ponds were created in connection with this production and were part of the milling plans approved by the AEC in connection with the issuance and renewal of FAP's license. The AEC contracts essentially provided for recovery of costs and a modest profit. No provision was made to defray the cost of moving the tailings to subsurface disposal. The tailings in Tailings Pond No. 1 resulted from the processing of ores involved in fulfilling FAP's contractual commitments to the AEC. Congress (Pub. Law 96-540, § 213) directed the Secretary of the Department of Energy to develop a plan for a cooperative program to provide assistance in the stabilization and management of uranium mill tailings which has resulted from ore processing to extract uranium under contracts with the United States. The Department of Energy has prepared a preliminary draft report (March 10, 1982) entitled "Commingled Tailings Study." The plan and recommendation of the Secretary were to be submitted to the Armed Services Committees of the Congress not later than October 1, 1981. It is probable that the United States will assume financial responsibility for the reclamation of tailings from ores processed pursuant to AEC contracts. Your arbitrary directive would impose the burden of such reclamation on FAP which it might not otherwise have to bear and at a time when, like other uranium companies, the members (Federal and American) are struggling to survive.

We believe that your continued efforts to impose arbitrary and unreasonable demands on Federal-American Partners is an unfortunate illustration of duplicative (and even triplicative) regulation, is contrary to express federal law, the instructions of the Wyoming legislature, and the spirit of the agreement that is presently being negotiated between the NRC and the DEQ.

Sincerely,

  
Niles J. Andrus  
Acting Project Manager

NJA:vr

cc: Bill Kearney  
Ross Scarano  
Tony Mancini  
Robert Sundin  
J. Losse  
J. Ferguson  
H. S. Bloomenthal