



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

JAN - 3 1994

Mr. David E. Mathes, Director
Offsite Program Division
Office of Southwestern Area Programs
Environmental Restoration
Department of Energy
Washington, DC 20585

Dear Mr. Mathes:

Your letter of August 6, 1993, transmitted a copy of the U.S. Department of Energy's (DOE's) proposed rule, implementing Title X of the Energy Policy Act of 1992, for review and comment by the U.S. Nuclear Regulatory Commission. The NRC staff has previously provided your office with informal comments on this document during its development.

DOE's regulations for implementing Title X appear to be well thought out and have been carefully coordinated during their preparation. We believe that the suggested provision for certification of costs by a company's outside auditing firm, and the right for DOE to audit the company's books, would be valuable additions.

During a surety review for a uranium mill licensee, we recently became aware of a problem that could develop related to the reimbursement program. The Congressional Conference Committee, in its explanatory statement, directs NRC to consider the potential Title X reimbursement in determining the sufficiency of the financial surety arrangements that must be established by mill operators for reclamation, decontamination, and decommissioning. In evaluating the procedures that DOE is establishing for the reimbursement program, we find that it may be very difficult for NRC to allow a reduction in the surety required from the licensee. This is because DOE's proposed regulations only reimburse the licensee. NRC would call upon the surety in circumstances where the licensee is not financially capable of doing the work. The surety money would, therefore, have to be able to finance a considerable part of the work independently of Title X funding as DOE only reimburses for the cost of work performed. If NRC called the surety, the licensee would not perform the reclamation work, therefore, the licensee would not be eligible for Title X reimbursement. Accordingly, under the proposed regulations, we see no basis for supporting NRC's reducing a surety in consideration of the availability of Title X funds. We request DOE to incorporate language in its rules that would allow reimbursement to a third party under a standby trust arrangement for performing the reclamation work in the event that the surety money has paid for work performed. This would allow NRC to take the potential reimbursement into account in defining the surety amount required from those affected licensees.

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David E. Mathes

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We are enclosing additional comments on the draft regulations and look forward to participating with DOE in this program. Any questions should be addressed to Allan Mullins of my staff on (301) 504-2578.

Sincerely,

ORIGINAL SIGNED BY

John T. Greeves, Director
Division of Low-Level Waste Management
and Decommissioning
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

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NUCLEAR REGULATORY COMMISSION STAFF COMMENTS ON
THE DEPARTMENT OF ENERGY'S PROPOSED REGULATIONS
IMPLEMENTING TITLE X OF THE ENERGY POLICY ACT

The Nuclear Regulatory Commission's comments are formatted to be consistent with the headings and outline format used by the Department Of Energy in its Proposed Rule.

I. Introduction and Background

No comments on this section.

II. Analysis of Major Issues

A. Determination of Reimbursable Costs

1. Maximum Reimbursement Amount

NRC staff believes your proposal on page 12 to determine the percentage of costs to be reimbursed by using the ratio of the total tons of tailings produced by the mill and the total tons of tailings produced in the production of uranium, which was subsequently sold to the government, is an acceptable approach. However, it is not clear how this determination is to be made; it would be helpful to have a discussion of how the quantities of tailings produced, as a result of sales of uranium to the government, is determined. For instance, will the determination consider the grade of the ore that was milled under both government and commercial contracts which would affect the quantity of tailings produced for each pound of uranium produced? The grade of ore milled when the government bought uranium may have been different than the grade of ore milled during the "commercial years" of the life for most mills. Thus, the quantity of tailings produced for each pound of uranium produced may not be the same for the time periods of government and commercial uranium production.

D. Inflation Index Determination

First full paragraph, ninth line, page 23, indicates that the base date for the escalation adjustment will be October 1992. This base date should be referenced in the regulations, and we have noted locations where the reference would be appropriate.

Enclosure

III. Section-By-Section Analysis

10 CFR Part 765 - Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

Subpart A - General

765.2 Scope and applicability

Paragraph (e), page 47, would be clearer if it also referenced 765.11 (f), which is the exception to the requirement that the tailings material be on site as of October 24, 1992.

765.3 Definitions

Definition of Federal-related tailings at bottom of page 49, would be clearer if it referenced the exception to tailings being onsite on October 24, 1992, which is mentioned above under 765.2 (e).

Definition of Surety Requirements on page 51 is not correct. The NRC does not require that the licensee "possess" funds to cover remedial action costs. Bank letters of credit, or in some cases parent company guarantees, are considered to be satisfactory sureties.

Subpart B - Reimbursement Criteria

765.10 Eligibility for reimbursement

Paragraph (a), page 51, requires that a licensee own the facility and incur the costs to be eligible for reimbursement. In some instances, mill ownership may have changed after some portion of reclamation costs have been incurred. It appears that those early costs would be precluded from reimbursement eligibility.

Paragraph (b), page 52, should reference the exception to material being on site on October 24, 1992, which is mentioned above under 765.2 (e).

765.11 Reimbursable costs

The authority citation in the third line, paragraph (1), page 52, should be changed by deleting "section 2022(d)" and adding "as amended" after 1954. The citation (42 U.S.C. 2021) in the fourth line should read (42 U.S.C. 2022).

765.12 Inflation index adjustment procedures

In Paragraph (a), page 54, the base year from which the inflation index is adjusted should be specified (see comment under II.D., page 23).

Paragraph (c), page 55, indicates that previous reimbursement amounts will be escalated to current year dollars to maintain a running total of reimbursements to compare with the \$5.50 per ton escalated ceiling on reimbursements. It should be

made clear in this section whether prior costs incurred for remediation for which reimbursement will be made will be escalated to current dollars prior to payment.

Subpart C - Procedures for Filing and Processing Reimbursement Requests

765.20 Reimbursement request filing procedures

Paragraph (4), pages 56 and 57, requires that activities for which reimbursement is requested must be specified in the site reclamation plan. In several instances, an NRC licensee has proceeded with reclamation activities, concurrent with NRC review of the reclamation plan, with the result that costs were incurred and work accomplished "at the licensee's risk" prior to approval of the reclamation plan. DOE might want to address whether this early work will be considered for reimbursement.

DOE might consider the desirability of a requirement for the licensee's external accounting/auditing firm to certify that the costs for which reimbursement is requested were paid and carried on the company's books. This could logically fall within paragraph (e) on page 58. In addition, DOE should state that it has the right to have an audit performed of the licensee's books by an outside accounting firm.

Subpart D - Additional Reimbursement Procedures

765.31 Placement of funds in escrow for subsequent remedial action.

Paragraph (a) page 65, states that funds will be placed in escrow for payment of claims for subsequent remedial action (after 2002). Funds placed in escrow should accrue interest for the benefit of the fund.