



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

DEC 21 1993

Kathleen M. Sisneros, Director
Water and Waste Management Division
State of New Mexico
Environment Department
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

Dear Ms. Sisneros:

As Chairman of the Transition Oversight Team (TOT) responsible for overseeing the closure of the Uranium Recovery Field Office (URFO), I am responding to your letter of November 18, 1993, to Ramon Hall, Director of URFO. In that letter, you expressed concern with the proposed performance-based license condition, which would allow licensees to make changes to their facilities under certain conditions without U.S. Nuclear Regulatory Commission approval. You further stated that some of the determinations licensees would need to make in implementing the condition are subjective and should not be left to industry to make. Based on this concern you recommended that the proposal, as it is currently written, should be withdrawn.

In developing the license condition, the staff ensured that the proposal was consistent with the regulations and licenses issued by NRC for other facilities including nuclear power plants, fuel cycle facilities, and the high-level waste repository. Overall, the performance based condition does not provide any more flexibility than that contained in the regulations and licenses for the facilities discussed above, and is therefore consistent with established agency policy. In addition, during a TOT meeting held with licensees and industry representatives on November 18, 1993, the NRC and licensee representatives indicated that nearly all of the instances where the condition would be used would relate to operational aspects of the facilities, and could not be applied to many aspects of the reclamation plan approved by NRC. Furthermore, because of the potentially significant cost impacts of having to rework major parts of the reclamations, the licensees emphasized that they would be reluctant to make anything other than very minor changes to their approved reclamation plans.

Also during the meeting of November 18, 1993, the staff emphasized that the burden of ensuring proper implementation of the condition was the responsibility of the licensees. It noted that the condition was structured such that licensees were required to submit an application for all license amendments unless they could demonstrate that the provisions specified in the license condition were satisfied. In addition, the staff stressed that the condition requires that a summary of all changes made under this condition be provided to NRC in an annual report. The staff believes that these summaries, coupled with information gained from inspections, would allow it to determine if a licensee had not properly implemented the condition, and was in violation of its license. If this were the case, the licensee would be required to document that the conditions had been corrected and what actions were taken to assure that the violation would not happen in the future. The licensee would also be subject to enforcement action by the NRC.

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Because the proposed performance-based license condition is consistent with established agency policy for other facilities, and because there are provisions in the condition that will allow NRC to review implementation of the condition, the staff believes that application of the proposed condition will not result in an adverse effect on the environment and public health and safety.

We appreciate your input and comments on this important issue. We would also welcome participation by you or a representative from your office, in this and other TOT efforts, including participation in future meetings.

Sincerely,


Malcolm R. Knapp, Director
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Material Safety
and Safeguards