

JUN 02 1993

FREEDOM OF INFORMATION ACT REQUEST

Director
Division of Information and Publication Services
Office of Administration
U. S. Nuclear Regulatory Commission (NRC)
Washington, D. C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-93-315
Rec'd 6-3-93

Pursuant 5 USC 552 (see 10 CFR Part 9 Subpart A of the Commission's regulations) would request "legal analysis from Regional Counsel", or recorded legal determinations by other persons, referenced or referred to by the NRC subject matter Part 40 material license (uranium mill) regulatory interaction revealed in the quotes brought forward by the present FOIA request below.

SECY-91-347 entitled "Uranium Feed Materials Other Than Natural Ores", dated October 25, 1991, by way of "Introduction", states in part on p. 2, paragraph 4: "The Nuclear Regulatory Commission (NRC) and Agreement States have received, and in some cases approved, requests to allow a uranium mill to process feed material that was not natural (native, raw) uranium ore and dispose of the resulting waste in the facility's tailings impoundment. In those cases, the feed material was generally either processing wastes from other extraction procedures or the residue from mine-water treatment. These requests were handled on a case-by-case basis, and approvals were based on the interpretation that the proposed feed material was refined or processed ore. This designation of the feed material as ore is critical to the determination of disposal methods. This stems from the definition under Section 11e.(2) of the AEA, which limits byproduct material origin to 'ore processed primarily for its source material content'." (Emphasis added.)

SECY-91-347, by way of examples, states at p. 5, the first 3 paragraphs under "2. Wastes From Treatment of Mine Water": "Some mines have to be dewatered as the shafts or pits fill with ground water. This water often contains dissolved constituents as a result of flow through and contact with ore bodies. It must therefore be treated before it can be discharged offsite. Treatment is often via ion-exchange columns which concentrate high levels of uranium on resins or the eluate. Several mills [] have obtained license amendments and processed these residues/wastes through the mill."

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Continuing at p. 5 of SECY-91-347: "The NRC staff approved the processing of these alternate feed materials, considering them to be refined and processed ore based on a legal analysis from Regional Counsel. This designation as ore is essential so that the residue from uranium processing can qualify as 11e.(2) byproduct material for the reasons stated earlier. With this interpretation, the resultant milling wastes were legitimately classified as 11e.(2) byproduct material."

"However, because there is not a definition of ore in 10 CFR Part 40 and because of the potential policy issues involved in approving the processing of feed material other than natural ore, the staff has put recent requests on hold."

Note that there is an ambiguity about what specific date certain license amendments were granted or licensing actions occurred which were based upon "legal analysis from Regional Counsel". There is also, where the above quotes are considered, an ambiguity about what licensing actions are on hold.

Such amendments or licensing actions concerned the processing "of [] alternative feed materials" which were considered "waste from treatment of mine waters".

SECY-91-347, as reflected in the subject matter quote above, indicates that "the NRC staff approved the processing of [] alternative feed materials considering [such alternative feed materials] to be refined and processed ore []".

Such approval, as stated by that October 25, 1991, staff Commission paper was reported to have been "based on a legal analysis from Regional Counsel".

There may have been, as revealed by NRC official records cited below, several license amendments or licensing actions granting the subject applicant/licensees permission to "process feed material that was not (native, raw) uranium ore and dispose of the resulting waste in the facilities 11e.(2) tailings impoundment" or other onsite structure.

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COPPER QUEEN MINE
SECY-91-347

Be that as it may be, would respectfully request "legal analysis from Regional Counsel" which was applied by the NRC licensing staff to the license amendments or other licensing actions contemplated by the above quotes from a Commission paper entitled "Uranium Feed Materials Other Than Natural Ores", dated October 25, 1991, and designated SECY-91-347.

It is hard for the questioner to imagine that the above FOIA request, considering the implementation of SECY-91-347 of October 25, 1991 as part of a Federal Register Notice (see 57FR20525, 20532, dated May 13, 1992), would be subject to fees beyond 100 pages or 2 hours search. In the event that "legal analysis from Regional Counsel", or recorded determinations by other persons, as referenced herein, prove to be elusive, petulant or otherwise hard to get to, would agree to pay reasonable fees.

mine

Although the quotes offered above do not delineate NRC staff licensing practices with respect to "residue from mine water treatment" or "wastes from treatment of mine water", the quotes obviously refer to past NRC staff licensing practices. By way of example, one such past practice is revealed in the attached transmittal dated August 12, 1987. That confirmatory letter from the Director, Uranium Recovery Field Office, NRC Region IV, to an applicant/licensee specifically mentioned by SECY-91-347 at p. 5, goes to "disposal of Velvet IX waste". It is unclear whether or not such August 12 letter is referring to direct disposal of residue/waste from mine water treatment onto a facility 11e.(2) byproduct impoundment or is referring to processed reused or recycled process solutions. (See SECY-91-243, dated August 7, 1991, entitled "Disposal of Material Other Than Atomic Energy Act of 1954, as Amended, Section 11e.(2) Byproduct Material Into Uranium Mill Tailings Impoundments", and see 57FR20525, 20526, column 2, "NRC Staff Analysis of Disposal of Non-Atomic Energy Act of 1954 Section 11e.(2) Byproduct Material in Tailings Impoundments", and see further p. 20525 of that May 13, 1992, public notice and discussion entitled "4.3 Mine Wastes".)

Thus, given the lack of specificity in the SECYS cited above, in the public notice which reiterated such SECYS, and in the attached August 12, 1987, transmittal, requestor would seek "legal analysis from Regional Counsel", or recorded legal determinations by other persons, relied upon by the August 12, 1987, determination.

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Please designate records responsive to SECY-91-347 references as Category 1 of records responsive to the present FOIA request. Please designate records responsive to the August 12, 1987, reliance on any legal determination as Category 2.

Thank you for your usual prompt and attentive response to this FOIA request.

John Darke
Member of Public

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Enclosure: As stated

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