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

AUG 18 1982

MEMORANDUM FOR: John T. Collins
Regional Administrator
Region IV

FROM: James P. Murray
Acting Executive Legal Director

SUBJECT: NEBRASKA MOU

We have reviewed the draft MOU forwarded by you under cover of your memorandum of July 27, 1982. Our comments follow:

1. The MOU should clearly state that it covers only uranium solution (in situ) mining projects.

2. The second "whereas clause" should reflect that NRC has reassumed authority over milling and solution mining of uranium in Nebraska. (47 FR 19258, May 4, 1982).

3. The third "whereas clause" is unclear. The MOU should contain a clear statement of the respective state and Federal authorities under particular statutes for particular regulatory activities.

4. Paragraph 1 states that coordination under the MOU, "will place no additional fiscal burden on the state and will allow the state to use NRC technical evaluation to support its permitting action." We are not certain what this means, but it could imply an undertaking by the NRC to either (1) reimburse the state for its costs of permitting underground injection of lixiviant under the Safe Drinking Water Act where it involves in situ extraction of uranium, or (2) that NRC will, at Federal expense, conduct technical studies for the state for underground injection control (UIC). We believe this paragraph should be clarified to indicate the scope of the burden placed upon NRC, if any, to pay for costs related to the state UIC permitting program.

5. Paragraph 2 states that both agencies shall "strive" to agree on license or permit conditions and sureties for groundwater restoration and surface decommissioning. What happens if, despite all striving, the agencies cannot agree? Is it to be presumed that state conditions under UIC will apply to groundwater restoration, and NRC conditions to above-ground decommissioning? The question should be answered in the MOU.

6. Paragraph 3 commits each party to cooperate in arranging meetings. Does paragraph 1 imply that NRC will bear the cost of such meetings as an item of communication coordination?

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7. Paragraph 4 is written too broadly and should be clarified. This paragraph could be read to give the state the power to compel a "public hearing" on the issuance of NRC source material licenses. The bases for NRC hearings on licenses are established in Federal law in Sections 181 and 189 of the Atomic Energy Act, in 10 CFR Part 2, and in decisions of the Commission and its licensing Boards. Under these authorities, no party other than the Commission may unilaterally determine that a hearing is necessary. The state may request a hearing, and undoubtedly would be considered a party, but that alone does not ensure a public hearing. See Kerr-McGee Corporation (West Chicago Rare Earth Facility) CLI 82-2, 15 NRC 232 (1982). The requirements for notice and procedures for hearings are well defined in 10 CFR Part 2. Further, the requirement for scheduling joint Federal-State licensing hearings represents a major policy determination whose implications should be carefully considered.

8. We do not understand the significance or intention of paragraph 5. If it means that NRC may be asked by the State to use its subpoena powers under § 161c of the Atomic Energy Act to obtain a document wanted by the state for UIC permitting, but unnecessary to NRC, then the paragraph is improper. NRC can only use its subpoena authority under § 161c to further the enforcement or administration of the Atomic Energy Act of 1954, as amended, and may not use it to enforce state laws.

Please do not hesitate to call upon us for assistance in drafting appropriate language.

James P. Murray
Acting Executive Legal Director

cc: G. Wayne Kerr, OSP
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