



7740005

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA — 93-226

RESPONSE TYPE

 FINAL
 PARTIAL
DATE **JUL 29 1993**

DOCKET NUMBER(S) (If applicable)

REQUESTER

Mr. John Darke

PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

 No agency records subject to the request have been located.

 No additional agency records subject to the request have been located.

 Requested records are available through another public distribution program. See Comments section.

 Agency records subject to the request that are identified in Appendix(es) _____ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

 Agency records subject to the request that are identified in Appendix(es) C are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.

 The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.

 Agency records subject to the request that are identified in Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.

 Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

 Agency records subject to the request are enclosed.

 Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.

Fees

 You will be billed by the NRC for fees totaling \$ _____.

 You will receive a refund from the NRC in the amount of \$ _____.

 In view of NRC's response to this request, no further action is being taken on appeal letter dated _____, No. _____.

PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

 Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

COMMENTS

*The record identified on enclosed Appendix C is responsive to your request. An additional search was conducted pursuant to your telephone call to Mr. William Brach which located this record. The staff believes this record is the draft technical review requested in your letter. A copy of this record is enclosed. This completes NRC's action on your FOIA request.

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PDR FOIA
DARKE93-226 PDR

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

Edward H. Windsor

APPENDIX C

RECORDS MAINTAINED IN THE PDR UNDER THE ABOVE REQUEST NUMBER

NUMBER	DATE	DESCRIPTION
1.	----	DRAFT Memo for Docket File No. 40-8681 from Pete J. Garcia, subject: "Amendment No. 12 to SUA-1358 for the UMETCO Minerals Corporation's White Mesa Mill," (3 pgs.).

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FREEDOM OF INFORMATION ACT REQUEST

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

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-93-226
Rec'd 4-20-93

Pursuant 5 USC 552 (see 10 CFR Part 9 Subpart A of the Commission's regulations), would request "technical review (enclosed)" enclosed and referenced (at page 2, btm.) by memorandum dated February 23, 1988, from Robert D. Martin, Regional Administrator, Region IV to Hugh Thompson, Director, Office of Nuclear Material Safety and Safeguards, which find enclosed. In your response to the present FOIA request, please refer to this document as Category 1 of the NRC records requested.

Would also request "staff's recent draft Commission paper (John Austin December 31, 1987) on NRC's role in regulating NARM wastes", referenced on page 3 of enclosed February 23. Please refer to this Commission paper as Category 2 of materials requested.

If documents are currently available, let me know date, ACN, etc. required to order from NRC Public Document Room.

Thank you for your usual prompt, thorough attention to this request.

John Darke
Member of Public

Box 703
Copper Queen Station
Bisbee, Arizona 85603

Enclosure: As stated

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
URANIUM RECOVERY FIELD OFFICE
BOX 8888
DENVER, COLORADO 80288

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URFO:WJF

MEMORANDUM FOR: Hugh Thompson, Director
Office of Nuclear Material
Safety and Safeguards

FROM: Robert D. Martin, Regional Administrator
Region IV

SUBJECT: LEGAL AND POLICY DECISION ON AUTHORIZATION TO DISPOSE
OF NON-BYPRODUCT WASTES IN URANIUM TAILINGS PONDS

The Uranium Recovery Field Office (URFO) has received numerous inquiries and has three pending applications (copies attached) seeking NRC authorization to dispose of "non-byproduct materials" in uranium mill tailings impoundments. These pending applications include wastes generated by activities regulated either by NRC or Agreement States under authorities created by the Atomic Energy Act of 1954, as amended (Act) as well as wastes generated by operations not controlled under the Act. These non-Act type wastes are classified as Naturally Occurring Radioactive Materials (NORM) or the more encompassing terminology of Naturally Occurring and Accelerator Produced Radioactive Materials (NARM). The first application, by American Nuclear Corporation (ANC), requests authorization to dispose of radium contaminated soils from both Denver, Colorado and Montclair, West Orange, and Glenridge, New Jersey sites into its uranium tailings pond. The second application, by Umetco-Nuclear Assurance Corporation (Umetco, NAC), proposes to process and dispose of the same New Jersey radium soil wastes in the Umetco tailings pond. Umetco's proposal to process the wastes through the mill circuit is more to facilitate disposal, although Umetco contends it will recover uranium values from those wastes. Both the New Jersey and Colorado wastes are NARM wastes. It is our understanding that the Colorado radium wastes are also designated wastes under EPA's Superfund clean up program. What impact the Superfund designation would have on disposal options for that waste is not known at this time. A third application, also by Umetco, involves wastes generated at a "secondary" uranium recovery facility (i.e. a facility which is designed to recover

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uranium from a waste stream of another mineral recovery facility). The secondary recovery facility (Bingham Canyon) is licensed by the State of Utah, and is regulated pursuant to an Agreement State status as provided by Section 274 of the Act.

These waste materials tend to have a number of things in common. They all contain nuclides of the natural decay chain that are in activity concentrations which are approximate to or less than that of uranium byproduct material tailings. Physically, the waste forms are also similar to uranium byproduct material wastes. The vast majority of these wastes are contaminated soils. As such, some of these wastes constitute appreciable volumes that would create a significant financial burden if producers and/or owners were required to utilize existing commercial low-level waste disposal sites. That reason, I expect, creates the current interest in disposals at uranium tailings ponds. It is noteworthy that some Agreement States (Utah, Colorado, and Texas) currently have the capability to license and regulate NARM disposal sites which could provide the needed disposal capacity for what appears to be a potentially large volume of contaminated soil at a reasonable cost when compared to disposal cost at commercial low-level waste sites. The State of Utah has recently licensed such a disposal site.

These wastes also have another unique attribute in that they do not meet the regulatory definition of "byproduct material". Up to this time, URFO has authorized only on a very limited basis the disposal of offsite wastes in uranium tailings ponds. In nearly all cases those authorizations were for wastes from other licensed "primary" uranium recovery facilities (licensed by the NRC or by an Agreement State under the special Agreement provisions of Section 275 of the Act) and the wastes met the "byproduct material" definition as given in Section 11(e)(2) of the Act. However, Umetco's request to dispose of wastes from a "secondary" uranium recovery facility at its mill in Utah can not be considered as uranium byproduct wastes. Secondary recovery facilities are licensed as source materials facilities and since these facilities' wastes do not evolve from the primary processing of natural ores the resulting wastes are not classified as uranium byproduct materials. This consideration is unlike the situation where the staff approved the processing of raffinate sludges (refined ore) for the primary purpose of uranium recovery at the Kerr McGee Mill.

We have completed our technical review (enclosed) and have concluded that "secondary wastes", because they are: 1) coincidental to a regulated uranium recovery activity under the Act; 2) are limited in quantity;

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3) and do not adversely impact the tailings reclamation, should be approved for disposal. I request your concurrence in this proposed course of action as it does represent a policy decision on our part since wastes from "secondary" recovery facilities are not included in the definition of "byproduct material" as given in the Act. At the same time, the Act does not preclude acceptance of such wastes. However, it may increase the NRC's regulatory burden to a slight degree and, as noted below, raises a question as to the acceptability of such wastes insofar as future transfers under Section 83 of the Act are concerned. If you agree that the secondary wastes can be accepted, we will authorize this disposal and subsequent similar disposals from other secondary recovery facilities or other closely related fuel facilities which are regulated under provisions of the Act. This action would enable the disposal of waste materials that presently can not be accepted for disposal at State permitted HARM sites. Approval would be granted, however, only after satisfactory resolution of the ownership question associated with Section 83 of the Act is achieved.

Although this proposed action makes sense from an origin standpoint, in that the wastes result from uranium extraction operations and these operations are regulated under provisions of the Act, it leaves unanswered the issue of accepting other non-byproduct wastes such as the HARM wastes. We believe that definitive guidance is needed on the acceptability of disposal of HARM wastes. I am aware of your staff's recent draft Commission paper (John Austin, Dec. 31, 1987) on NRC's role in regulating HARM wastes. In our opinion, if the NRC were to expand the scope of its regulatory control by authorizing disposal of HARM wastes, it would set a precedent which could lead to NRC consideration of direct regulatory control over other HARM wastes. As pointed out in Mr. Austin's paper, the potential resource implications and interagency co-jurisdictional circumstances are troublesome at least.

In the case of either secondary recovery wastes or HARM wastes, I am also concerned that the provisions in Sec. 83 of the Act on ownership and transfer of ownership of byproduct material as required under UMTRCA may create a situation whereby the NRC would never be able to terminate a mill license if we allow the co-mingling of these wastes, because the States or the Department of Energy may simply refuse to accept transfers of such co-mingled wastes as not being consistent with Section 83 and UMTRCA. This issue warrants definitive guidance and involves legal issues which warrant coordination with DOE and various states.

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We urge a policy decision that rules out the disposal of HARM wastes in uranium tailings ponds. Conversely, we believe that, everything else being equal, the disposal of those wastes in tailings piles that originate from "secondary" uranium recovery facilities or other related fuel facilities has some merit. After the resolution of the Section 83 ownership issues and our recommended approach is adopted, we believe that approvals should be limited to those cases where the uranium mill operators would limit disposals to volumes of materials which would be minimal when compared to the volume of existing byproduct material wastes resulting from processing natural ores at the site and where there is no demonstrated impact on the reclamation plan for the site. With such guidance in hand, URFO can respond to the requesting licensees. Consideration should perhaps be given to recent actions or similar proposals in Agreement States such as Texas (i.e. Conquista) and Washington (i.e. Dawn).

Robert D. Martin
 Robert D. Martin
 Regional Administrator
 Region IV

Enclosures: As Stated

cc: S. Treby, OGC
 D. Nussbaumer, OSP

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