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(Return to WM, 623-SS)

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KJHamill
DEMartin
RAScarano
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MEMORANDUM FOR: Donald A. Nussbaumer, Assistant Director
for State Agreements Program
Office of State Programs

PDR

FROM: Ross A. Scarano, Chief
Low-Level Waste Licensing Branch
Division of Waste Management

SUBJECT: PROPOSED COLORADO POLICY ON FINANCIAL TESTS

Per your October 20, 1982, request, we have reviewed the Colorado Department of Health's proposed policy statement on financial tests as surety for mill licenses. Our review indicates that the proposed policy statement would be generally acceptable. The position paper represents a reasonable approach to blending the criteria developed by the State of New Mexico for the same purpose and the EPA criteria for hazardous waste facilities. Further, the paper addresses most of the concerns discussed at the March 3, 1982 meeting between CDH, NRC, and industry organizations.

Although, as noted, the policy paper is generally acceptable, we would suggest making the following recommendation to the State. The position paper notes that the parent organization of the licensee may enter the agreement in the event the licensee is a subsidiary corporation. The specifics of how the parent company assumes responsibility should be spelled out. We suggest the following:

"An owner or operator may meet the requirements of section _____ by obtaining a written corporate guarantee. The guarantor must be the parent corporation of the licensee.

The terms of the corporate guarantee must provide that:

(a) if the licensee fails to perform final decommissioning and reclamation covered by the corporate guarantee, the guarantor will do so or establish a trust fund.

(b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and to the state. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the state.

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(c) If the owner or operator fails to provide alternate financial assurance as specified in this section and also to obtain the written approval of such alternate assurance from the state within 90 days after receipt by both the licensee and the State of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee."

We also suggest you consider using a standard form for corporate guarantees such as was developed by EPA for their RCRA regulations. (FR, Vol. 47, No. 67, April 7, 1982, pgs. 15063-15064.)

The staff would appreciate it if in your response to the State you would request that the Department continue to coordinate with NRC on this matter. In fact, it is noted that Mr. Hazle requested comments on the policy paper from all interested parties by November 20, 1982. NRC staff would appreciate the opportunity to review those comments which are received in order to gain a better understanding of various interested parties' views.

Original signed by

Paul H. Lohaus
Ross A. Scarano, Chief for
Low-Level Waste Licensing Branch
Division of Waste Management

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SURNAME	KJHamill:mb	RAScarano					
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