

February 25, 1983

A. F. Fonner

NOTE TO: John G. Davis, ONMSS
Robert E. Browning, ONMSS
R. Dale Smith, Region IV, Denver
G. Wayne Kerr, OSP
Robert H. Engelken, Regional Administrator, Region V

FROM: Robert L. Fonner, OELD

Attached for your information is a letter I have received from Michael Hanbey, an assistant attorney general in the State of Washington Attorney General's office. The letter is self-explanatory, and raises a question of what NRC can do for the State if the Dawn Mining Facility defaults on bonded obligations. He also asks for NRC assistance in requesting that the Department of the Interior not take action on its mining reclamation bond for mining on the Indian Reservation that would jeopardize the fund (\$1,000,000 in an irrevocable letter of credit) for reclaiming the mill tailings area which is located off the Reservation on land owned by Dawn.

Hanbey implies that the State may take action to remit uranium milling and tailings licensing to the NRC under § 274j, thus making the problem an NRC problem. However, the authority to revest uranium mill and tailings licensing granted in Section 274j is discretionary in the Commission, not automatic upon request of the Governor of a State.

I do not know if Hanbey's basic premise is correct, that a calling of the bond by the Department of the Interior would create the difficult situation he forecasts. This could only be ascertained by an examination of the financial situation of Dawn, the terms of its mine reclamation bond in favor of Interior, and the irrevocable letter of credit in favor of the State.

Legally, under § 274j the NRC has no obligation to become involved unless the situation results in a need for Commission intervention to protect the public health and safety. Accordingly, I believe that any answer to Hanbey should be based as much upon program and policy considerations as legal. I would appreciate your views on an appropriate response to Mr. Hanbey's letter.

Robert L. Fonner

Robert L. Fonner
Attorney, OELD

Attachment:
As stated

cc: G. H. Cunningham
W. J. Olmstead