



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

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JUN 14 1980

MEMORANDUM FOR: John Kendig, State Agreements Programs  
FROM: John F. Klucsik, Attorney, Office of the Executive Legal  
Director  
SUBJECT: AGREEMENT STATE AUTHORITY REVIEW - NEW MEXICO

As a result of the review of New Mexico's Environmental Improvement Act §§ 12-12-1 through 12-12-13, The Radiation Protection Act §§ 12-9-1 through 12-9-12, and The Radiation Improvement Division's Radiation Protection Regulations (April 21, 1980), several concerns have been raised. These concerns relate to compliance with the requirements of § 274o of the Atomic Energy Act of 1954 for Agreement States.

§ 274o(3)(A)(iii) Written Determination

UMTRCA requires state procedures regarding licenses to include a written determination based upon findings and evidence.

State regulation 3-312(J) provides that parties requesting notice of a decision be notified. It does not require that the decision be rendered in writing as required by UMTRCA. When read together with State regulation 1-201(I), however, the UMTRCA requirement may be satisfied. Section 1-201(I)I, provides that any action taken in a hearing be by written order where the Director believes a person is violating or threatens to violate a regulation or license condition pursuant to an NRC agreement. If 1-201 applies to all license determinations, the UMTRCA requirement of a written determination would be met. If State regulation 1-201 does not apply to all license determinations, including those relating to new applications, the UMTRCA written determination requirement would appear not to be fully satisfied.

§ 274o(3)(A)(iii) Judicial Review

UMTRCA requires State procedures whereby license determinations are subject to judicial review.

Neither State statutes nor State radiation regulations reviewed provide that decisions of the Director of the Environmental Improvement Division regarding licenses are subject to judicial review.

§ 274o(3)(c) Environmental Impact Analysis

UMTRCA requires a written environmental impact analysis which is to include several specific considerations. Among them are waterway and groundwater

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impacts, site and engineering method alternatives and long term impacts including those of decommissioning, decontamination, and reclamation.

State regulation 3-200(H) requires that specified license applications be accompanied by an environmental report which addresses the short term and long term environmental, radiological, and public health and safety aspects and alternatives associated with proposed license activity. The State regulations reviewed do not specifically require waterway or groundwater impacts to be considered as among environmental aspects of the report. It does not appear that the State regulations meet the UMTRCA requirements in this regard.

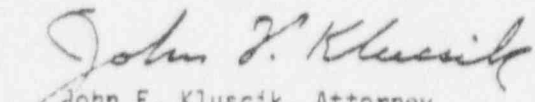
Similarly, although the State regulation requires consideration of long term impacts it does not specifically require consideration of decommissioning, decontamination, and reclamation. It therefore appears that the State regulations do not meet the UMTRCA requirements in this regard.


#### 274o Long Term Care Funds Transfer

UMTRCA provides that if the State has a long term care fund financed by license deposits, and if the transfer of land to the U.S. is required, the agreement must provide that funds paid by the licensee to the State will be transferred to the U.S. In addition to the agreement so providing, the State treasurer must be authorized to make such a transfer.

The State does have a long term continued care fund, § 12-0-5.1C N.M.S.A., and it may be necessary to transfer land to the U.S. The State statutes reviewed do not provide the authority to make the required funds transfer to the U.S. Use of the fund is authorized, however, to remedy or prevent harmful situations involving abandoned wastes or inoperative facilities, § 12-9-5.2 N.M.S.A. Although this general authority might be sufficient to allow payments to the U.S. for authorized purposes, clear and specific statutory authority to make such transfers would be preferable.

In some instances, an adequate indication of the ability to comply with the UMTRCA requirements might be provided by State statutory provisions or internal procedures of the Environmental Improvement Agency not brought to light in the course of this review. In other instances, an opinion of the State Attorney General may be necessary to resolve the concerns with respect to State regulation. Only with regard to the authority to make continued care fund transfers to the U.S. does there appear to be a need for additional statutory authority. Where existing State statutes, regulations or internal procedures address the above concerns, citation to and a copy of same should be provided.

  
John F. Kluscik, Attorney  
Office of the Executive Legal Director



John Kendig

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cc: Guy H. Cunningham  
R. L. Fonner  
Wayne Kerr  
Frank Young

NOV 13 1979

Ref. SA/JFK

MEMORANDUM FOR: Douglas Sly, I&E  
Ross Scarano, NMSS

FROM: G. Wayne Kerr, Assistant Director  
for State Agreements Program  
Office of State Programs

SUBJECT: UNC, CHURCH ROCK TAILING DAM BREAK

Attached is a report we just received on New Mexico's Sampling Program  
to determine the Environmental Impact of the UNC mill tailings spill.

G. Wayne Kerr, Assistant Director  
for State Agreements Program  
Office of State Programs

Attachment:  
As stated

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(1pg)

Status Report on Sampling Program to  
Determine the Environmental Impact of the United  
Nuclear Corporation Mill Tailings Spill

New Mexico Health and Environment Department  
Environmental Improvement Division

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November 2, 1979

DUPLICATE

SEP 12 1979

MEMORANDUM FOR: Hub Miller, HMSS  
D. Sly, IE

FROM: G. Wayne Kerr, Assistant Director  
for State Agreements Program  
Office of State Programs

SUBJECT: UNC TAILING DAM BREAK, NEW MEXICO

Attached is a packet of information and environmental data we received from New Mexico regarding the tailing dam failure at UNC Church Rock.

G. Wayne Kerr, Assistant Director  
for State Agreements Program  
Office of State Programs

Enclosure:  
As stated

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Add-8  
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OCT 10 1979

MEMORANDUM FOR: Doug Sly, IE  
Ross Scarano, NMSS

FROM: G. Wayne Kerr, OSP

SUBJECT: UNC Church Rock Dam Failure

Attach is information regarding the above subject that we received from New Mexico today.

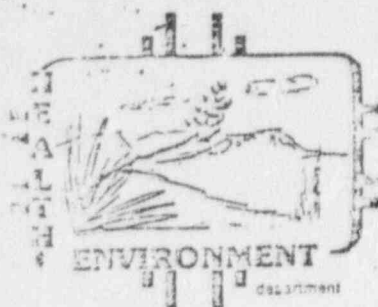
G. Wayne Kerr, Assistant Director  
for State Agreements Program  
Office of State Programs

Enclosures:  
As stated

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STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT DIVISION  
P.O. Box 968, Santa Fe, New Mexico 87503  
(505) 827-5271

Thomas E. Baca, M.P.H., Director  
September 20, 1979

Bruce King  
GOVERNOR

George S. Goldstein, Ph.D.  
SECRETARY

Larry J. Gordon, M.S., M.P.H.  
DEPUTY SECRETARY

FOR IMMEDIATE RELEASE

Contact: Doug Barber  
827-5271  
Ext. 260

SANTA FE --- The Health and Environment Department's Environmental Improvement Division announced today that arrangements have been made through the U.S. Nuclear Regulatory Commission (NRC) with EG&G in Las Vegas, Nevada to fly over the Rio Puerco of the west the end of next week to do an aerial survey of the river. This survey is to determine areas of radiological contamination that may have resulted from the spill at United Nuclear Churchrock tailings dam.

The company (EG&G) is a private company that does a great deal of work for the U.S. Department of Energy (DOE) and intends to use a large Boeing helicopter, equipped with 20, 5 x 2 in. sodium iodide crystals in fiberglass pods. These crystals are high volume highly sensitive detectors, used frequently in searching for radioactivity in gamma ray detection.

A plan to fly the river course at approximately 100 ft. altitude at a relatively slow speed will result in either an aerial photo or map with a scale map indicating pinpointed areas, if any, of gamma ray detection.

- MORE -



FOR IMMEDIATE RELEASE

September 20, 1979

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A spokesman from EC&G stated the capability of radiation detection at 150 ft. altitude at up to 60 knots using this method of detection. He further stated they (EC&G) had had an amazingly high correlation with ground level hand held instruments in areas of natural background levels.

The benefit of this method is a capacity to cover a large area of ground and pinpoint areas of contamination on a short period of time.

The flight will take place from the areas of the spill to the state line (Arizona-New Mexico). It is possible they will fly the river into Arizona if data indicates the need.

EC&G is well experienced in this type of survey as they have done a great number of surveys of this type, and they state that this is not a "special" survey for them.

A letter report to NRC is expected within a few weeks of the flight.

OCT 11 1979

MEMORANDUM FOR: Doug Sly, I&E  
Ross Scarano, NMSS

FROM: G. Wayne Kerr, Assistant Director  
for State Agreements Program, SP

SUBJECT: URANIUM TAILINGS DAM SPILL, UNC, CHURCH ROCK,  
NEW MEXICO

Attached for your information are copies of correspondence dealing with the above subject, dated September 12, 13, 14, 24 and 25, 1979, just received from the State of New Mexico.

G. Wayne Kerr, Assistant Director  
for State Agreements Program  
Office of State Programs

Enclosure:  
As stated

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