



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 11, 1999

40-8681

Mr. James Rauch
F.A.C.T.S. Newsletter
Box 566
Kenmore, NY 14217-0566

SUBJECT: NON-APPLICABILITY OF NEW RULE, RADIOLOGICAL CRITERIA FOR
LICENSE TERMINATION OF URANIUM RECOVERY FACILITIES" [69 FR 17506,
APRIL 12, 1999] TO FUSRAP SITES

Dear Mr. Rauch:

I am responding to your letter to Chairman Jackson dated May 26, 1999, in which you indicated that the new rule, "Radiological Criteria for License Termination of Uranium Recovery Facilities," [69 FR 17506, April 12, 1999], does not apply to Formerly Utilized Remedial Action Program (FUSRAP) sites. The new rule which you referenced establishes a benchmark standard for uranium and thorium, based on the existing standard for radium currently contained in 10 CFR Part 40, Appendix A, Criterion 6(6). The existing standard requires that the concentration of radium at uranium mills after decommissioning may not exceed the background level by more than 5 picocuries per gram in the first 15 cm (6 inches) of soil, and 15 picocuries for every subsequent 15 cm (6-inch) layer. The new rule requires licensees to remediate their sites so that the NRC-regulated uranium and thorium remaining on site after decommissioning will not exceed the dose resulting from radium. In addition, licensees must demonstrate that radiation doses from NRC-materials are as low as is reasonably achievable.

You are correct that the new rule does not apply to the FUSRAP sites. Under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), NRC does not have the statutory authority to determine the disposition of waste or tailings from ore processed primarily for its source material content at a site not licensed by the NRC on or after 1978. Briefly stated, UMTRCA, enacted in 1978, amended the Atomic Energy Act of 1954 (AEA), and provided the NRC with jurisdiction over the byproduct material generated by the processing of ore at NRC-licensed sites. Section 83a. of the AEA was added by UMTRCA. Section 83a. provides that any NRC license issued pursuant to Section 62¹ or Section 81² of the AEA must include conditions and terms related to the final disposition of all byproduct material created by the activity at such sites, as well as the sites themselves. The critical factor in determining the NRC jurisdiction over byproduct material in question is whether the site at which the processing took place was licensed by the NRC on or after November 8, 1978, the date Section 83a. became effective, not when the material was generated. As such, there are sites with the material in question that are not under the NRC's

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¹ This section addresses the licensing of activities regarding source material.

² This section addresses the licensing of activities regarding byproduct material.

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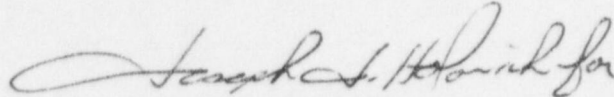
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June 11, 1999

authority because these sites were not licensed by the NRC at or after the time UMTRCA was passed. However, the material not regulated under UMTRCA by the NRC is under the jurisdiction of other Federal and State agencies, including the Department of Transportation and the Environmental Protection Agency.

I trust this reply clarifies our position and responds to your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "John T. Greeves".

John T. Greeves, Director
Division of Waste Management,
Office of Nuclear Material Safety
and Safeguards

J. Rauch

-2-

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Sincerely,

Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

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Sincerely,

[Joseph J. Holonich for]

John T. Greeves, Director
Division of Waste Management,
Office of Nuclear Material Safety
and Safeguards

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