

WM Record File

WM Project

39

Docket No.

PDR

LPDR

WM39/WM60/GNG/86/05/28

5/28/86

- 1 -

(Return to WM, 623-SS)

John G. Themelis, Project Manager  
 Uranium Mill Tailings Project Office  
 U.S. Department of Energy  
 Albuquerque Operations Office  
 P.O. Box 5400  
 Albuquerque, New Mexico 87115

## Distribution:

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Dear Mr. Themelis:

In response to your April 16, 1986 inquiry regarding the feasibility of disposal of UMTRA Project waste at NRC-licensed commercial milling sites, the NRC legal staff has prepared an evaluation of each of the five issues raised by your letter (Enclosure 1). Prior to receiving your letter, the State of Wyoming requested similar guidance, specifically with regard to the residual radioactive material at the Riverton, Wyoming UMTRA site (Enclosure 2).

The thrust of your letter centered on the flexibility of the Uranium Mill Tailings Radiation Control Act (UMTRCA) in allowing an active site licensee (under Title II) to assume custody and responsibility for residual radioactive material until the time of decommissioning. Although there is flexibility in UMTRCA to permit this disposal option, the following points from the enclosed legal analysis should be carefully considered:

- o The active site licensee must be authorized by NRC, or the Agreement State, in their license to accept such material. Termination of the active license is not anticipated prior to active site decommissioning, although ownership of the site may be acquired by the Federal Government or the State prior to license termination. (See Enclosure 1, Item 1).
- o The standards to be met for a commingled site would need to be the more stringent of the EPA standards, as well as satisfying other NRC regulations for decommissioning; e.g., closure requirements of 10 CFR Part 40, Appendix A.
- o Remedial action associated with a particular UMTRA site would not be considered complete, until the placement of a final stabilized cover over the tailings. In the event that residual radioactive material from an UMTRA site is removed to an active Title II site, the commingled status of the tailings would entail closure of the site of commingling prior to NRC determination that the remedial action is complete. Should multiple tailings piles exist at an active site, the entire active site need not be decommissioned and closed prior to requesting NRC concurrence with completion. However, those tailings piles where such commingling has occurred would need to be covered and stabilized in accordance with EPA standards, as discussed in the previous item. Since these areas may be licensed prior to closure of the active uranium recovery operations at

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such a site, these areas would need to be maintained separately with a surveillance and maintenance program specifically designed to assess the performance of the reclaimed commingled piles distinct from any contamination from the active piles.

More detail is presented in Enclosure 1; however, it appears that DOE's responsibility for the UMTRA waste will not cease immediately following removal to an active uranium mill tailings site.

Should you have any questions regarding this letter, contact Giorgio N. Gnugnoli (FTS 427-4788) of my staff.

Sincerely,

Malcolm R. Knapp, Acting Chief  
Low-Level Waste and Uranium  
Recovery Projects Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. NRC Legal Analysis
2. State of Wyoming letter dated April 10, 1986

cc: J. Turi, DOE/HQ/NE-24  
R. Shaffer, WDEQ  
R. Marquez, DOE/AL/OCC  
R. Dale Smith, NRC/URFO

DFC : WMLU	: WMLU	: ELD	: WMLU	:	:	:
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NRC STAFF LEGAL ANALYSIS OF FIVE ISSUES RAISED BY DOE, APRIL 16, 1986

1. May a State acquire the site, in terms of ownership, to comply with Title I, prior to final decommissioning of the site by the licensee? In general Title II of UMTRCA places no restrictions on the ownership of tailings disposal sites and tailings prior to decommissioning. 10 CFR 40.21 allows any person to hold legal title to tailings. Section 83b(1)(A) of the Atomic Energy Act of 1954, as amended, requires only that title to the property be transferred to the United States or the State at the State's option prior to termination of the license. Termination of the license prior to completion of site decommissioning is not anticipated. See e.g., 10 CFR 150.15a(b)(1). Accordingly, there is no regulatory bar to state acquisition of a Title II site prior to final decommissioning.

2. If Title I tailings are disposed of in a Title II site, when is Title I remedial action complete? When does the Government accept title to the site (under Title I)? What happens to the licensee's sureties? These three questions are interrelated because under Title I ownership is to pass to the United States upon completion of the remedial action (UMTRCA Section 104(f)(1)) and the site is to be maintained under a license issued to the Department of Energy (Section 104(f)(2)), thus potentially obviating the need for licensee sureties. The statute, however, only indirectly addresses the question of when remedial action is complete. Section 108(a)(1) states that the Secretary of Energy must comply with the applicable EPA standards in carrying out a remedial action. The EPA standards in 40 CFR 192 for Title I sites require covering the tailings to reduce radon emanation with a cover design longevity of 1000 years. Accordingly, it could be concluded that remedial action is not complete, as a minimum, until there is a final stabilized cover over the tailings. It also follows that if Title I tailings have been deposited in a Title II site for disposal, and that Title I requires final cover for completion of remedial action, then the whole site would need to be closed because of the commingling. If this is the case then the licensee's sureties for ensuring site closure could be terminated, except for any portion needed to ensure completion of a corrective action program inaugurated to comply with Title II ground water protection standards. Final groundwater protection requirements have not yet been published for Title I sites. If, however, EPA follows the pattern it has established for Title II sites, groundwater protection becomes a matter of secondary importance after final cover is in place, assuming that any corrective action program would have been initiated prior to final cover.

3. Would compliance with EPA Title II standards result in technical compliance with EPA Title I standards? Although the answer to this inquiry depends upon

technical comparison of the two sets of standards and not on legal analysis, we would note that a commingled disposal site would have to meet the more stringent set of standards. Further, the EPA standards are not the only standards applicable to the Title II component. For the latter the closure requirements of 10 CFR Part 40, Appendix A, also apply.

4. Is remedial action completed when the Title I tailings have been deposited at the Title II site, or when the Title II site is decommissioned? Please see our response in paragraph 2 above.

5. Is it permissible under Title II for owners of tailings disposal areas to charge a fee for accepting Title I materials? Is a license amendment needed to receive such material or to charge a fee? The NRC has no regulations governing the commercial relationships between its licensees and other persons. If the NRC licensee is authorized to receive and dispose of Title I tailings in his licensed tailings disposal area, he needs no authority from the NRC to charge for the service rendered. However, a license amendment would be needed to receive the Title I tailings.



ENCLOSURE 2

ED HERSCHLER  
GOVERNOR

## Department of Environmental Quality

### LAND QUALITY DIVISION

HERSCHLER BLDG. - THIRD FLOOR  
122 WEST 26TH

TELEPHONE 307-777-7756

CHEYENNE, WYOMING 82002

April 10, 1986

Mr. Dale Smith, Director  
Nuclear Regulatory Commission  
Uranium Recovery Field Office  
Region IV  
P.O. Box 25325  
Denver, CO 80225

RE: Riverton, Wyoming UMTRA Site

Dear Mr. Smith:

As you are aware, the State of Wyoming wishes to relocate the Susquebana mill tailings under the UMTRA program. American Nuclear Corporation (ANC) has offered its Tailings Pond No. 1 as a repository for this project. At this time we have a few questions concerning the comingling of the Title I tailings with the ANC Title II material. Our questions are outlined as follows:

1. Is it possible to comingling Title I and Title II tailings in this instance?
2. What procedure would have to be implemented between the NRC and DOE to allow comingling?
3. Do you foresee any problems in executing the procedure?
4. What is the time frame involved in implementing the procedure so that work could begin?

Additionally, we would like to know the status of NRC's review of DOE's Remedial Action Plan and Environmental Assessment. Last year we received comments from NRC which documented your concerns about these two documents. Could you advise me whether or not your concerns have been addressed.

Thank you for your cooperation in these matters. Should you have any questions, please feel free to call me.

Sincerely,

*Roger Shaffer*  
Roger Shaffer  
Administrator

8606/94527  
RS:LA:dlw

cc: Randy Wood, Nancy Freudenthal, Lynn Askew