

UNITED NUCLEAR CORPORATION



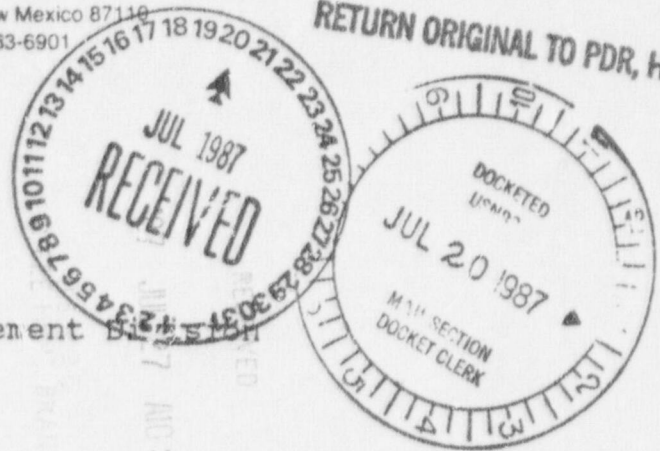
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RETURN ORIGINAL TO PDR, HQ.

July 13, 1987

Mr. Michael J. Burkhardt
Director
New Mexico Environmental Improvement Division
P.O. Box 968
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, New Mexico 87504-0968



Dear Mr. Burkhardt,

UNC Mining & Milling ("UNC") sincerely appreciates having had the opportunity to meet with you June 16, 1987, to discuss various issues regarding reclamation of the Church Rock uranium mill and tailings facility. The purpose of our meeting was to discuss your letter of March 2, 1987 asking UNC to submit a revised groundwater discharge plan to your office, and to discuss regulatory matters with respect to the Church Rock facility generally. During our meeting, UNC expressed its concern regarding the potential overlap and conflict between state environmental regulatory programs, particularly the New Mexico ground water program, and the various federal environmental regulatory programs which govern site reclamation. At your request, those concerns are set forth herein.

The United States Nuclear Regulatory Commission (NRC) has required UNC to submit a reclamation plan for the Church Rock mill and tailings facility. The NRC takes the position that the mill and tailings facility must be reclaimed in such a manner as to protect human health and the environment from radiological hazards for 1,000 years to the extent practicable, and for at least 200 years. NRC's regulations provide that reclamation must satisfy the requirements of 10 C.F.R. Part 40, Appendix A, including specific groundwater protection and reclamation requirements, which incorporate United States Environmental Protection Agency ("EPA") regulations for the protection of groundwater at active uranium mill sites, set forth at 40 C.F.R. Part 192 Subpart D. and 10 C.F.R. Part 40, Appendix A, Criterion 5.

In 1986, UNC retained Canonie Environmental Services, Inc. ("Canonie") to prepare a reclamation plan for the Church Rock facility. After nine months of exhaustive research and analysis, including both on-site surveys and geotechnical sampling and analyses for site characterization and an in-depth review of geotechnical and environmental data collected at Church Rock since the late 1960's by UNC and others, Canonie prepared a detailed and comprehensive Reclamation Plan addressing all aspects of site reclamation. The Church Rock Reclamation Plan

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DESIGNATED ORIGINAL

Certified By Mary C. Hood

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In addition to the issues raised by NRC's request to UNC to submit a reclamation plan, as you are aware EPA has listed the Church Rock site on the National Priorities List ("NPL") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). The site was listed following a tailings dam breach which occurred in 1979. Cleanup activities were performed by UNC in concert with state and federal agencies. Follow-up studies designed to detect any lingering affects of the breach have been completed by a number of entities including EPA, the Center for Disease Control, and the EID. These studies demonstrate that no detectable after-affect remains from the breach.

Because of the listing of the Church Rock site on the NPL, various procedural and substantive remediation requirements imposed by CERCLA may be applicable to reclamation activities at the site. As you know, CERCLA imposes very detailed procedural obligations upon the development of remedial action plans for use in CERCLA cleanups. These procedures can result in extremely time-consuming and expensive administrative and public review processes. In addition to the procedural aspects of CERCLA cleanups, CERCLA generally requires that such cleanups be performed to meet legally applicable or relevant and appropriate federal and state standards, identified in consultation with the relevant state authorities. EPA's CERCLA procedures and cleanup authorities cover virtually the same subject matter as NRC's reclamation authorities. UNC does not know at this time how or if the CERCLA clean-up provisions will apply to UNC's planned reclamation and stabilization of the Church Rock facility. NRC and EPA have been in the process of developing a Memorandum of Understanding ("MOU") that will, we understand, formalize the working relationship we have been working under for the last year, namely that NRC will function as the lead agency for the cleanup of mill tailings, consulting with EPA as necessary.

As we discussed at our meeting, UNC is greatly concerned that it may have to deal with at least three regulatory agencies - NRC, EPA and the EID - in obtaining approval of a reclamation plan for the Church Rock site. NRC takes the position that UNC must as a obtain approval from the NRC of it's Reclamation Plan to reclaim the Church Rock mill and tailings facility. Furthermore, EPA apparently will be consulted on the Reclamation Plan because of the site's listing on the NPL. In all likelihood, the State will also be involved in the review process under either the MOU or CERCLA's consultation provisions. UNC is seriously concerned that this multiparty, review process could result in UNC being asked to perform duplicative and inconsistent cleanup actions.

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This concern is brought into focus by the EID's request that UNC submit a proposed groundwater discharge plan addressing UNC's planned reclamation activities at the site. UNC believes that such a requirement would engender needlessly duplicative review and approval processes that could well result in conflicting regulatory directives. Furthermore, UNC seriously questions whether the New Mexico groundwater program is legally applicable to the Church Rock site.

UNC does not believe that submittal of a revised groundwater discharge plan is appropriate under the facts and circumstances pertinent to the Church Rock site. Following nine months of study by Canonie Environmental of site conditions in preparation of the Church Rock Reclamation Plan, Canonie has advised UNC that contrary to previous agency assumptions regarding site conditions, prior to mining and milling activities in the Church Rock vicinity, no groundwater existed in the formations of concern at the site. Before mine water discharge began in 1968, the geologic units presently at the site and its vicinity existed in an unsaturated condition. Recharge from the mine water discharge to Pipeline Arroyo created a temporarily saturated system in the near vicinity of what later became the tailings impoundment area in the alluvium and in Zones 3 and 1 of the Upper Gallup Sandstone where no groundwater had previously existed. Seepage from the tailings impoundment affected the temporarily saturated system created by mine water discharge. Both mine water discharge and tailings pond operation have been discontinued, and the temporarily saturated system is gradually dissipating, which will return the local geologic units to their historically unsaturated condition. At no time during this period will contaminated seepage reach or otherwise affect any naturally-occurring groundwater, any present groundwater uses, or any water usable in the reasonably foreseeable future. Furthermore, this temporarily saturated system is not being utilized, nor could it reasonably be expected to be utilized prior to dissipation. These conclusions are documented and set forth in greater detail in the Church Rock Reclamation Plan and Geohydrologic Report, submitted by UNC to the NRC on June 1, 1987. UNC understands that the NRC plans to distribute copies of the Plan and Report to interested agencies directly.

The New Mexico water quality statute was enacted to protect naturally-occurring groundwater resources by regulation and protection of public waters. Accordingly, because no groundwater occurred historically at the Church Rock site, UNC believes that the groundwater regulatory program, which was never intended to address such artificially-created saturated systems, particularly when such artificial systems will not impact or combine with

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other, naturally-occurring groundwater, does not apply to the temporarily saturated system present at Church Rock.

In addition to being beyond the scope and purpose of the groundwater program, UNC believes that the New Mexico Water Quality Act by its terms does not apply to conditions at the Church Rock site. Section 74-6-12(C) of the New Mexico statutes prohibits the regulation of groundwater if the water pollution and its effect are confined within private property when the water does not combine with other waters. Thus, in order to be subject to the Act, polluted groundwater on private property must exit the private property and the water must combine with other waters. Those "other waters" logically must themselves be subject to regulation under the Act. At Church Rock, although tailings seepage has gone beyond UNC's property in a discrete and localized area, the water has not combined with other waters, and, as previously discussed, will not combine with other waters before the system reverts to its natural unsaturated state. Accordingly, UNC believes that Section 74-6-12(C) precludes state regulation of the temporarily saturated system. See also N.M. Stat. Ann. Sec. 74-6-2(G) ("water subject to state regulation does not include "private waters that do not combine with other surface or subsurface water"). UNC therefore believes that no groundwater discharge plan is required for operations at the Church Rock site.

In addition to questioning the applicability of the New Mexico groundwater program to the Church Rock site, UNC believes that even if the program were otherwise applicable, it would be preempted under the Supremacy Clause of the United States Constitution. As previously discussed, both NRC and EPA have promulgated groundwater protection regulations specifically addressing groundwater at active uranium mills under authority of the Atomic Energy Act and the Uranium Mill Tailings Radiation Control Act ("UMTRCA"). The United States Court of Appeals for the Tenth Circuit has recently declared that the UMTRCA's directive to EPA to promulgate groundwater standards preempts state control of groundwater. See American Mining Congress v. Thomas, 772 F.2d 640, 648 (10th Cir. 1985), cert. denied, 106 S.Ct. 2276 (1986). New Mexico is therefore preempted from applying its groundwater regulations at Church Rock.

As a final matter, as previously noted the Church Rock site is listed on the NPL. Section 121(e) of the Superfund Amendments

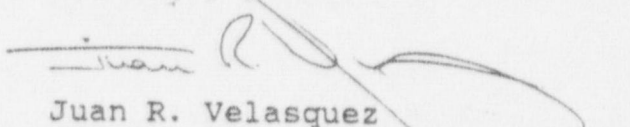
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and Reauthorization Act of 1986 (which amends CERCLA) provides that "[n]o Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on site, where such remedial action is selected and carried out in compliance with this section." SARA therefore prohibits the imposition of a state groundwater permit requirement for any cleanup actions performed at Church Rock under CERCLA.

UNC appreciates the opportunity to raise these concerns with you. As we stressed at our meeting with you on June 16, UNC does not seek to avoid its environmental obligations at Church Rock. To the contrary, UNC has prepared the Reclamation Plan which carefully and thoroughly addresses all aspects of the site, including the temporarily saturated system, and which will protect human health and the environment. UNC seeks an expeditious administrative review and approval of the plan so that it may begin reclamation actions at the site in an environmentally conscientious manner. UNC believes that the only way this can be achieved is by streamlined and coordinated actions between the agencies involved in plan review and approval, by the avoidance of interagency conflict, and by the avoidance of conflicting and duplicative program requirements. UNC's comments herein are submitted with that goal in mind.

As we discussed at our meeting, UNC and the State have a long regulatory history at the Church Rock site, and positions have been taken historically by both parties based upon information available at the time. Considerable new information and analyses have been developed for the site. It is very important that actions proposed for the site be examined in light of all available information rather than on previous assumptions which may or may not be correct. We hope that the information provided will be of assistance to you and will result in acceptable interaction among NRC, EPA and EID. If you or your staff have any questions regarding the foregoing issues or other matters, we would be happy to discuss them with you at any time. If we may be of further assistance, please do not hesitate to call on us.

Sincerely yours,


Juan R. Velasquez
Manager, Environmental Affairs

JRV:nlk

cc: Pete Garcia, NRC