



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

July 1, 1988

The Honorable Alan K. Simpson
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-6175

Dear Senator Simpson:

In your May 13, 1988 letter, you requested information on the status of the American Nuclear Corporation (ANC) amendment request to permit ANC to receive third-party radium-contaminated soils and debris for disposal in its Tailings Pond No. 1.

We have considered this request and the complex regulatory issues involved in authorizing disposal of this type of material at a mill tailings site. We have recently reached the decision that the major regulatory issues noted below would have to be favorably resolved before the U.S. Nuclear Regulatory Commission (NRC) could consider approving the disposal of these radium wastes in ANC's tailings pond under current statutory authority. The statutory authority is unlikely to change in the near future. Therefore, we cannot approve the ANC request. This decision is being conveyed to ANC.

A primary issue stems from the fact that this waste material contains radium and is classified as naturally-occurring and accelerator-produced radioactive materials (NARM). At issue is whether the inclusion of NARM wastes in a mill tailings disposal site is consistent with U.S. Government ownership (or State ownership) and other authorities under Section 83 of the Atomic Energy Act (the Act). Since the U.S. Department of Energy (DOE) is currently designated to take title to the mill tailings sites, NRC requested DOE's view on this question. DOE's response stated that DOE has doubts about its authority to take title to the mill tailings disposal sites if NRC has allowed the commingling of NARM (non-byproduct) materials in the impoundments (a copy of the DOE response is attached).

It is important to note that NRC does not have authority to regulate NARM. Thus, the amendment, if issued, would result in a commingling of regulated and unregulated materials in the same disposal unit. This would create duplicative jurisdiction between NRC and other Federal or State agencies with respect to the commingled radioactive materials. Moreover, if NARM waste constituents were to violate the current standards (e.g., migrate into ground water), the Commission's authority under Section 84c. of the Act to approve alternatives to requirements for disposal or reclamation would be seriously impaired.

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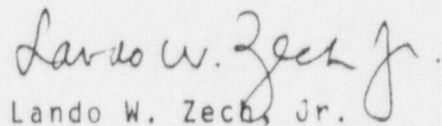
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Additionally, the wastes may be subject to presently applicable Resource Conservation and Recovery Act (RCRA) regulations or other U.S. Environmental Protection Agency (EPA) rules for hazardous constituents or NARM, as well as to applicable State requirements. If the waste results from a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) clean-up action, the EPA requirements to be met would also need to be considered by the licensee to ensure that there is no issue regarding suitability of the site for disposal of the CERCLA wastes. The appropriate regulatory authorities would have to address these requirements.

Finally, since there is currently a NARM disposal site licensed by the State of Utah and a license application under review in the State of Colorado, there appears to be no compelling need at this time to dispose of NARM material in uranium mill tailings impoundments.

I hope this information is useful to you and, I appreciate your continued interest in our programs.

Sincerely,


Lando W. Zech, Jr.

Enclosure:

DOE letter dated June 10, 1988

cc: The Honorable John Breau
The Honorable John S. Herrington, Secretary
U.S. Department of Energy



Department of Energy
Washington, DC 20545

JUN 10 1988

Mr. Richard L. Bangart, Acting Director
Division of Low-Level Waste Management
and Decommissioning
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Bangart:

This is in response to M. R. Knapp's letter of April 14, 1988, to the Department of Energy regarding the Department's acceptance of transfer of ownership of licensed uranium mill tailings impoundments if non-byproduct materials were also disposed there.

While the Department supports the Nuclear Regulatory Commission's efforts to find permanent disposal sites for these materials, it is not clear that the Department would have the authority under Section 83 of the Atomic Energy Act to accept custody of non-byproduct materials. Congressional action may be needed to provide an unambiguous resolution on this issue.

Assuming some means of resolving the authority question was achieved, the prior satisfaction of all Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, requirements would be essential. Appropriate financial arrangement would have to be provided so that the Department would bear no additional cost associated with the acquisition of this material.

Your letter indicated that there are three pending applications before the Commission for the disposal of non-byproduct material at licensed uranium mill tailings sites. We also understand there may be different materials in question; some ("NARM") clearly outside of NRC jurisdiction and some ("secondary" recovery waste) within NRC jurisdiction. We would be willing to discuss this in more detail, if you desire, with respect to specific material at specific sites.

Sincerely,

John E. Baublitz
Acting Director
Office of Remedial Action
and Waste Technology
Office of Nuclear Energy

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

May 13, 1988

The Honorable Lando W. Zech, Jr.
 Chairman
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555

Dear Lando:

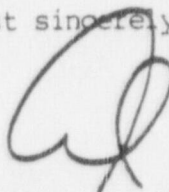
On October 21, 1987, American Nuclear Corporation filed a request for an amendment to its license (SUA-667) to permit it to receive third party radium contaminated soils and debris for disposal in its Tailings Pond No. 1.

It is my understanding that this application, which has now been pending before the NRC for six months, has raised a number of policy and legal issues that need to be addressed by the Commission.

Would you please advise me where things stand on this license amendment application? What policy and legal issues need to be resolved, what is the schedule for resolving those matters, and when does the Commission anticipate that it will be able to act on this application?

I thank you for looking into this matter for me and look forward to hearing your response.

Most sincerely,



Alan K. Simpson
 Ranking Minority Member
 Subcommittee on Nuclear Regulation

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