



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
DIVISION OF RADIATION PROTECTION

7171 Cleanwater Lane, Bldg. 5 • P.O. Box 47827 • Olympia, Washington 98504-7827
TDD Relay 1-800-833-6388

August 8, 2000

Dennis Sollenberger
State Programs, Mail Stop 3D23
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Sollenberger:

The purpose of this letter is to notify the NRC that the Washington State Department of Health (WDOH) has completed a comprehensive technical and environmental review of DMC's request to dispose of non-11.e(2) byproduct material at its uranium mill tailings impoundment as part of its review of an amended closure proposal from Dawn Mining Company (DMC). DMC's request is to dispose of untreated Midnite Mine Water Treatment Plant (MMWTP) sludge (source material) directly into Tailings Disposal Area 4 (TDA-4) at the DMC millsite, rather than processing it through the mill for its uranium content.

Since the MMWTP sludge does not classify as 11.e(2) byproduct material under the Atomic Energy Act, but as source material, it is our understanding that its disposal into TDA-4 is subject to the ten criteria found in the NRC Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11.e(2) Byproduct Material In Tailings Impoundments (September 22, 1995 Federal Register). Of particular interest to us is Criterion #9, which states: "The Department of Energy (DOE) and the State in which the tailings impoundment is located, should be informed of the Nuclear Regulatory Commission findings and proposed action, with a request to concur within 120 days. A concurrence and commitment from either DOE or the State to take title to the tailings impoundment after closure must be received before granting the license amendment to the 11.e(2) licensee."

Enclosed are relevant letters from the Washington State Department of Ecology, the U.S. Environmental Protection Agency, and the Northwest Interstate Compact. The department's review has found that nine of the ten NRC guidance criteria regarding direct disposal of non-11.e(2) material have been met (see Attachment 1). The remaining criterion (Criterion #9) is

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Dennis Sollenberger
Page Two

concurrence from the U.S. Department of Energy. U.S. DOE has requested the Department of Health to ask the NRC to review and comment on the department's actions thus far, before making a final decision on Criterion #9. The department's proposed action is to approve the proposal and issue a license amendment which allows direct disposal of the Midnite Mine Water Treatment Plant sludge into TDA-4 at DMC's millsite.

Please feel free to contact Gary Robertson at (360) 236-3241 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Erickson", with a long horizontal flourish extending to the right.

John L. Erickson, Director
Division of Radiation Protection

Enclosures

APR 05 '00 08:44AM DOH RAD PROTECTION



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APR 04 2000

DIVISION OF RADIATION PROTECTION

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

April 3, 2000

Mr. Thomas A. Shepherd
President, Shepherd Miller, Inc.
3801 Automation Way
Suite 100
Fort Collins CO 80525

Dear Mr. Shepherd:

I have received your letter of March 27, 2000, in which you enclosed TCLP analysis data of the Dawn Mining Company filtercake sludge produced by the Midnite Mine water treatment plant covering the past ten years; a letter, dated March 20, 2000, from Mr. Gary Robertson of the Washington Department of Health to the Dawn Mining Company in which he requested confirmation, in writing, from Ecology that the filtercake sludge is not a dangerous waste; and a letter dated June 23, 1992, from Mr. Wayne Krafft of Ecology's Solid and Hazardous Waste Program to Mr. Robertson of the Department of Health, stating, in part, that there was no reason to expect the sludge to be a dangerous waste.

Based on my review of the documentation provided in your March 27, 2000, letter I concur with Dawn Mining Company's determination that the water treatment plant sludge is not a dangerous waste. I would, however, like to reiterate Mr. Krafft's statement in his June 23, 1992, letter that "this opinion does not constitute a "certification of designation", as it is always the generator's responsibility to properly determine if a waste is a dangerous waste".

I trust that this letter will meet both the needs of the Dawn Mining Company, whom you represent, and the Department of Health, Division of Radiation Protection. If I may be of further assistance, please contact me at (360) 407-7109 or diha461@ecy.wa.gov.

Sincerely,

A handwritten signature in cursive script, reading "Diane K. Hallisy".

Diane K. Hallisy
Environmental Specialist
Nuclear Waste Program

cc: Gary Robertson, DOH



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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MAY 31 2000

DIVISION OF RADIATION PROTECTION

May 24, 2000

Reply To
Attn Of: ECL-115

Gary Robertson
Division of Radiation Protection
Washington Department of Health
Airdustrial Park, Building 5
Olympia, WA 98504

Re: Dawn Mill proposed license amendment, Ford, Washington

Dear Mr. Robertson:

This letter is in regard to the amendments proposed by Dawn Mining Company (Dawn) to its Radioactive Materials-License No. WN-1043-2. The amendments would allow Dawn to dispose of sludge from the Midnite Mine water treatment plant directly into the mill tailings impoundment known as TDA-4, located at Dawn's mill site in Ford, Washington.

Both you and Dorothy Stoffel have been helpful in taking the time to explain the amendment process and provide technical and regulatory information to my staff and me related to the proposed amendment. I understand that the Washington Department of Health (DOH) is hoping to make a decision regarding Dawn's proposal later this month, unless new information requires a supplemental Environmental Impact Statement (EIS).

As you know, EPA is interested in the closure of the mill site for reasons related to EPA's involvement with the Midnite Mine, which is also operated by Dawn. Currently, EPA is investigating the release of hazardous substances at the Midnite Mine under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.

DOH has stated that it will follow NRC guidance in reviewing Dawn's proposed direct disposal of the sludge, which is non-11.(e)2 by-product material, in TDA-4. The guidance requires a demonstration "that there are no . . . [CERCLA] issues related to the disposal of the non-11.e(2) byproduct material." Similar demonstrations are required with respect to the Toxic Substances Control Act (TSCA) and the Resource Conservation and Recovery Act (RCRA). We understand that such demonstrations are intended to assure that a tailings impoundment will not be regulated by more than one agency.

I am writing to let you know that EPA has no present intention to regulate TDA-4 under CERCLA. As you may be aware, several years ago, EPA assessed the mill site for potential inclusion on the National Priorities List (NPL). At that time, EPA determined that DOH should continue its oversight of the closure of the mill. EPA may revisit that decision, as it does in other

situations where EPA involvement in a NPL caliber site is deferred; however, as stated above, EPA is at this time assuming that DOH will continue in its current regulatory role.

I hope this will help you in reviewing the license amendment. EPA hopes to continue coordinating with DOH regarding both the Dawn Mill and Midnite Mine to assure that both agencies have the appropriate information to support site decisions. Please contact me at (206) 553-7151, or call Ellen Hale, EPA's project manager for Midnite Mine, at (206) 553-1215 if you have questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael F. Gearheard". The signature is fluid and cursive, with a large loop at the end.

Michael F. Gearheard, Director ^{for}
Environmental Cleanup Office

Northwest Interstate Compact

On Low-Level Radioactive Waste Management

P.O. Box 47600. Olympia, Washington 98504-7600. (360) 407-7102. Mike Garner, Executive Director

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AUG 07 2000

DIVISION OF RADIATION PROTECTION

August 4, 2000

Mr. David Delcour
President and Chief Operating Officer
Dawn Mining Company LLC
W. 505 Riverside, Suite 500
Spokane, Washington 99201

Dear Mr. Delcour:

The Northwest Interstate Compact Committee has no objection to the Dawn Mining Company proposal, as reviewed by the Washington State Department of Health, to dispose of non-11.e(2) material, Midnite Mine water treatment plant sludge (source material), in Tailing Disposal Area 4 located at the company's mill site.

At its June 13, 2000 meeting the Northwest Compact Committee reached a tentative decision that it did not have jurisdiction with respect to the Dawn Mining Company request. This position was described in a "draft" letter to Mr. Paul Lohaus, Director of the Nuclear Regulatory Commission Office of State and Tribal Programs. At the June meeting, Compact Counsel was simultaneously asked to review the Compact law to determine if the tentative decision accurately reflected the Committee's authority.

At the July 21, 2000 meeting of the Northwest Compact Committee, Compact Counsel summarized his review of the compact statutes, specifically in regard to the Committee's tentative decision made during the June meeting. Counsel stated it was his opinion the Dawn Mining Company proposal fell under the general jurisdiction of the Compact Committee as it was a matter arising under the compact. However, Counsel did not believe the proposal could be characterized as a request for access and therefore recommended that the Compact Committee either (1) transmit to Washington state any objections it may have to the proposal, or (2) pass a motion indicating that the Compact Committee has no objections.

Following the review by Compact Counsel, the Compact Committee unanimously adopted a motion stating it had no objections to the Dawn Mining Company proposal.

Mr. David Delcour

Page 2

August 4, 2000

Should you have any questions please contact Mike Garner at (360) 407-7102.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Goldstein", written over a horizontal line.

Lawrence Goldstein, Chair
Northwest Interstate Compact

cc: Northwest Compact Committee
Northwest Compact Counsel
Mr. Gary Robertson, Washington State Department of Health
Mr. Paul Lohaus, Nuclear Regulatory Commission

Attachment 1

NRC Criterion 1

"In reviewing licensee requests for the disposal of wastes that have radiological characteristics comparable to those of the Atomic Energy Act (AEA) of 1954, Section 11.e(2) byproduct material [hereinafter designated as "11.e(2) byproduct material"] in tailings impoundments, staff will follow the guidance set forth [in the criteria] below. Since mill tailings impoundments are already regulated under 10 CFR Part 40, licensing of the receipt and disposal of such material [hereinafter designated as "non-11.e(2) byproduct material"....] should also be done under 10 CFR Part 40."

Response to Criterion 1

As described above, the MMWTP sludge comes from the same source as the byproduct material that was produced during milling operations and discharged into TDA-4. It is a filtercake similar in physical form to the mill-produced byproduct material, and contains the same chemical and radiological elements. Staff have followed the NRC guidance criteria and applied the state equivalent of Appendix A to 10 CFR Part 40, WAC 246-252, to the request.

NRC Criterion 2

"Radioactive material not regulated under the AEA shall not be authorized for disposal in an 11.e(2) byproduct material impoundment."

Response to Criterion 2

Prior to regulatory oversight of the MMWTP by WDOH, an evaluation was done of the filtercake material, and it was determined that it met the federal and state definition of source material. Therefore, it is regulated under the AEA.

NRC Criterion 3

"Special nuclear material and Section 11e.(1) byproduct material waste should not be considered as candidates for disposal in a tailings impoundment, without compelling reasons to the contrary. If staff believes that such material should be disposed of in a tailings impoundment in a specific instance, a request for approval by the Commission should be prepared."

Response to Criterion 3

As stated in the response to Criterion 2, the MMWTP sludge is source material, and therefore is neither special nuclear material nor 11.e(1) byproduct material.

NRC Criterion 4

"The 11.e(2) licensee must demonstrate that the material is not subject to applicable Resource Conservation and Recovery Act (RCRA) regulations or other U.S. Environmental Protection Agency (EPA) standards for hazardous or toxic wastes prior to disposal. To further ensure that RCRA hazardous waste is not inadvertently disposed of in mill tailings impoundments, the 11.e(2) licensee also must demonstrate, for waste containing source material, as defined under the AEA, that the waste does not also contain material classified as hazardous waste according to 40 CFR Part 261. In addition, the licensee must demonstrate that the non-11.e(2) material does not contain material regulated under other Federal statutes, such as the Toxic Substances Control Act (TSCA). Thus, source material physically mixed with other material, would require evaluation in accordance with 40 CFR Part 261, or 40 CFR Part 761. (These provisions would cover material such as: characteristically hazardous waste; listed hazardous waste; and polychlorinated biphenyls.) The demonstration and testing should follow accepted EPA regulations and protocols."

Response to Criterion 4

In June 1992, the Department of Ecology concurred with DMC's assessment that the MMWTP sludge was not a dangerous waste. The Department of Ecology evaluated the MMWTP sludge again in April 2000, and again concurred with DMC's assessment that it is not a dangerous waste (WDOE). The analyses of the constituents of the MMWTP sludge demonstrate that it contains no other material implicated by this criterion.

NRC Criterion 5

"The 11.e(2) licensee must demonstrate that there are no Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) issues related to the disposal of the non-11.e(2) byproduct material."

Response to Criterion 5

The purpose of the NRC guidance provision is to reduce the potential for regulatory oversight of the tailings impoundment by more than one agency, in relation to the eventual transfer of the site to the Department of Energy. WDOH does not consider the guidance provision to require that the licensee demonstrate that there are no CERCLA issues related to the site whatsoever. Rather, the analysis of CERCLA issues should be whether or not the disposal of source material into TDA-4 raises any new or different CERCLA issues than those that already exist. The 1994 Final Supplemental EIS (WDOH 1994) recognizes that both CERCLA and MTCA authorities are available to address remediation of the site. Thus, CERCLA issues related to the millsite already exist. There is no indication that the disposal of source material into TDA-4 raises any new CERCLA issues. EPA has stated that it has no present intention of regulating TDA-4 under CERCLA (EPA).

NRC Criterion 6

"The 11.e(2) licensee must demonstrate that there will be no significant environmental impact from disposing of the non-11.e(2) byproduct material."

Response to Criterion 6

WDOH's review, provided in this document, has determined that direct disposal of MMWTP sludge into TDA-4 would not involve substantial changes and/or new information indicating probable significant adverse environmental impacts that were not adequately evaluated in existing environmental reviews (WDOH 1981, 1991, 1992a, and 1994).

NRC Criterion 7

"The 11e(2) licensee must demonstrate that the proposed disposal will not compromise the reclamation of the tailings impoundment by demonstrating compliance with the reclamation and closure criteria of Appendix A of 10 CFR Part 40."

Response to Criterion 7

WDOH's review, provided in this document, has determined that direct disposal of MMWTP sludge into TDA-4 would not compromise the reclamation of the tailings impoundment, and is consistent and complies with Washington's equivalent to Appendix A 10 CFR Part 40, WAC 246-252 (WDOH 1997).

NRC Criterion 8

"The 11.e(2) licensee must provide documentation showing the approval by the Regional Low-Level Waste Compact in whose jurisdiction the waste originates as well as approval by the Compact in whose jurisdiction the disposal is located."

Response to Criterion 8

The Northwest Compact's decision is pending completion of WDOH's review of DMC's request and presentation of WDOH's findings to the Compact committee. Before WDOH would amend DMC's radioactive materials license to allow direct discharge, final approval by the Northwest Compact must be given.

NRC Criterion 9

"The Department of Energy (DOE) and the State in which the tailings impoundment is located, should be informed of the Nuclear Regulatory Commission findings and proposed action, with a request to concur within 120 days. A concurrence and commitment from either DOE or the State to take title to the tailings impoundment after closure must be received before granting the license amendment to the 11.e(2) licensee."

Response to Criterion 9

U.S. DOE's decision is pending receipt of the completed Technical and Environmental Evaluation, and a request from WDOH for a determination that implementation of DMC's proposal would not interfere with the transfer of ownership to U.S. DOE. WDOH would not amend DMC's radioactive materials license to allow direct discharge, without written concurrence from U.S. DOE.

NRC Criterion 10

"The mechanism to authorize the disposal of non-11.e(2) byproduct material in a tailings impoundment is an amendment to the mill license under 10 CFR Part 40, authorizing the receipt of the material and its disposal. Additionally, an exemption to the requirements of 10 CFR Part 61, under the authority of § 61.6, must be granted. (If the tailings impoundment is located in an Agreement State with low-level waste licensing authority, the State must take appropriate action to exempt the non-11.e(2) byproduct material from regulation as low-level waste.) The license amendment and the § 61.6 exemption should be supported with a staff analysis addressing the issues discussed in this guidance."

Response to Criterion 10

WDOH's review, provided in this document, has determined that direct disposal of MMWTP sludge into TDA-4 would be consistent and in compliance with WAC 246-252. TDA-4 was constructed in compliance with 10 CFR Part 40 criteria, and since the sludge material has been demonstrated to be very similar to the tailings, it is acceptable for disposal into TDA-4.

In addition, direct disposal would not involve substantial changes and/or new information indicating probable significant adverse environmental impacts that were not adequately evaluated in the existing EIS/SEIS. Protection of public health and the environment does not require application of the requirements of WAC 246-250, the state equivalent of 10 CFR Part 61. Therefore, direct disposal of the sludge should be exempted from WAC 246-250. If the license is amended to allow direct disposal of the sludge, an exemption will be granted.