



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
DIVISION OF RADIATION PROTECTION

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December 8, 2000

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

Dear Mr. Hsueh:

This is in response to our telephone conversation on December 7, 2000, in which we discussed Attachment 1, Criterion 8 of the department's August 8, 2000 submittal to Dennis Sollenberger. In light of the Northwest Compact's August 4, 2000 letter to Dave Delcour (enclosed), you have advised that we update the response we originally provided in Attachment 1, Criterion 8. As you know, since that document was drafted, the department did complete its review and did present its findings to the Northwest Compact.

The Compact's August 4 letter to Dave Delcour states: "Following the review by Compact Counsel, the Compact Committee unanimously adopted a motion stating it had no objections to the Dawn Mining Company proposal." As shown in the enclosed revision to Attachment 1, the department considers the requirements of Criterion 8 to have been met.

If I can be of any further assistance, please feel free to contact me at (360) 236-3241.

Sincerely,

Gary Robertson, Head  
Waste Management Section

GLR:krf

Enclosures



RECEIVED

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.

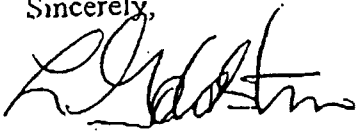
Mr. David Delcour

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

## (REVISED)

### 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 Interstate Compact met on June 21, 2000 to further discuss its June 13 tentative decision that it did not have jurisdiction with respect to DMC's request. In a letter to Dave Delcour dated August 4, 2000, the Compact stated, "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." The letter further stated, "Following the review by Compact Counsel, the Compact Committee unanimously adopted a motion stating it had no objections to the Dawn Mining Company proposal." Therefore, the department considers that the licensee has provided the necessary documentation to satisfy the requirements of Criterion 8.

### 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."

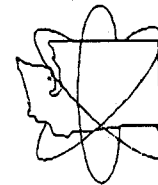
### Response to Criterion 10

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.



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DATE: 12/8/00

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Please Deliver to:

Kevin Hsueh

From:

Mary Robertson

Instructions:

This is an update to yesterday's submittal,  
with more information.

This message may be confidential. If you received it by mistake, please notify the sender and return the item. All messages to and from the Department of Health may be disclosed to the public.

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