

October 13, 2000

MEMORANDUM TO: Paul H. Lohaus, Director
Office of State and Tribal Programs

FROM: Philip Ting, Chief **/RA/**
Fuel Cycle Licensing Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards

SUBJECT: REVIEW AND COMMENT ON WDOH'S ACTIONS ON GRANTING THE
LICENSE AMENDMENT TO THE DAWN MINING COMPANY

As requested in your memorandum dated September 15, 2000, we have reviewed Washington State Department of Health's (WDOH's) documentation of its review of a proposed disposal of non-11e.(2) byproduct material at Dawn Mining Company's (DMC's) uranium mill tailings impoundment. WDOH concluded that nine of the ten criteria in the U.S. Nuclear Regulatory Commission's (NRC's) 1995 guidance on the disposal of non-11e.(2) material (60 FR 49296) have been met. The remaining criterion, concurrence by the U.S. Department of Energy, is dependent on NRC review of WDOH's actions. Based on our review, we question the conclusion that criterion 4 has been met.

Criterion 4 states that there must be a demonstration that the material proposed for disposal is not subject to regulation by the U.S. Environmental Protection Agency under the Resource Conservation and Recovery Act (RCRA) and does not contain material regulated under other Federal statutes, such as the Toxic Substances Control Act (TSCA). WDOH's documentation never directly addresses this issue. Rather it states that the Washington Department of Ecology (WDOE) concurred with DMC's assessment that the material proposed for disposal is not a "dangerous waste" and provides a copy of WDOE's letter attesting to that. In order to satisfy criterion 4, WDOH must show a link between "dangerous waste" and material subject to regulation under RCRA, TSCA, or other Federal statutes; specifically it must show that material that is not "dangerous waste" does not fall under Federal statutes for hazardous or toxic wastes.

However, WDOH need not show that the proposed material is not subject to Federal regulation as a hazardous or toxic waste. In the Staff Requirements Memorandum (SRM) related to SECY-99-0012, the Commission directed the staff to allow more flexibility in disposal of non-11e.(2) byproduct material in mill tailings impoundments. Specifically, the Commission directed the staff to allow disposal of such material in mill tailings impoundments if: 1) there is adequate protection of public health, safety, and the environment, 2) the long-term custodian indicates its willingness to accept the site, and 3) necessary approvals of other affected regulators have been obtained.

P. Lohaus, Director

Therefore, we conclude that WDOH either has to show that the proposed material is not subject to regulation under Federal statutes as a hazardous or toxic waste or if it is subject to regulation show that the three criteria identified in the SRM related to SECY-99-0012 have been met.

This review was performed by Myron Fliegel, a senior project manager in the Uranium Recovery Section. Any questions should be directed to Dr. Fliegel, who can be reached at 301-415-6629.

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Therefore, we conclude that WDOH either has to show that the proposed material is not subject to regulation under Federal statutes as a hazardous or toxic waste or if it is subject to regulation show that the three criteria identified in the SRM related to SECY-99-0012 have been met.

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