

February 21, 2002

Mr. William Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
168 North 1950 West
P. O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

We have conducted a completeness review of your draft application for an amendment to your Agreement for uranium milling and 11e.(2) byproduct material dated November 2001. The review was conducted by an inter-office staff team identified in Enclosure 1. The review was based on the Commission Policy Statement that provides criteria for new agreements, discussed below, and an Office of State and Tribal Programs (STP) procedure for processing new agreements (SA-700), which we have previously discussed with you.

The completeness review was conducted to determine whether the draft application contained sufficient information to enable staff to conduct a detailed review of the amendment application. The team found that the draft amendment application provided information on the appropriate major program elements for a uranium milling program and reflected significant effort on the part of your staff. The team also identified several areas where additional clarifying information or documentation is needed. Our comments are contained in Enclosure 1. Please note that our comments only address those elements where additional information is needed. The team concluded other program elements contained sufficient information to support a detailed review. The Commission Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption thereof by States through Agreements," [Effective January 23, 1981 (46 FR 7540), and amended by Policy Statements published July 16, 1981 (46 FR 36969) and July 21, 1983 (48 FR 33376)], specifies the criteria the Commission will apply in making its finding that a proposed Agreement State program is adequate to protect public health and safety and compatible with NRC's regulatory program, as required by the Atomic Energy Act of 1954, as amended. Under this process, the staff prepares a written assessment of the State's program, based on a review of the State's application against the criteria, to support the Commission's finding.

The Handbook to SA-700, which identifies the necessary documentation for a complete application, was used by the staff to identify any additional information and documentation necessary to complete your request for an amended Agreement. For your reference, the comments are correlated to the pertinent sections of your draft amendment application. We would also appreciate any comments you might have on the usefulness of the procedure and handbook.

William Sinclair

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February 21, 2002

We would welcome an opportunity to meet with you to review the comments, and answer any questions concerning the review, the information needed, or steps involved in processing the amended Agreement. Please contact me at 301-415-3340, or Dennis Sollenberger at 301-415-2819 to arrange a meeting or conference call.

Sincerely,

/RA/

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

Enclosure:
As stated

William Sinclair

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February 21, 2002

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Sincerely,

/RA/

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

Enclosure:
As stated

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STP-AG-28

**Comments on the Draft Utah Application for an Amended
Agreement dated November 2001**

The draft application was reviewed by a team of NRC staff:

Dennis Sollenberger, Project Manager, STP
Ted Johnson, Technical Reviewer, NMSS
Jared Heck, Legal Reviewer, OGC
Linda McLean, Regional State Agreements Officer, Region IV

The review team had comments in two areas, staffing and legal elements.

Staffing:

On page 8 of the draft application, it states that Utah will create four new positions that may be filled by up to four new hires. The reviewers could not determine the number of staff needed, the number of new staff who will be hired, or how many staff will be dedicated to or working on the mill portion of the program. The final application should clearly indicate the necessary FTE that will be used to accomplish the mill program. It should include the staff that will fill those positions, their training and experience, and state whether they are qualified to perform independent work in accordance with the State's training and qualification program. We suggest that you use Appendix B to SA-700 and the tables in Appendix B and submit them as part of your application. In lieu of using the tables, you should clearly identify the required level of effort needed for the program (number of FTE or positions and percentage of time devoted to the program), specific staff who will fill those positions and their training and experience, and identify the work areas where they are authorized to conduct independent work in accordance with Utah's training and qualifications program. If you plan to use existing staff, the application should also contain a description of any work that would be deferred or not done while new staff are trained. Sufficient staff must be available and trained at the time the amended Agreement becomes effective.

The reviewers noted that at least one resume in Appendix B was not up to date. Please review the resumes and ensure they are current at the time of the final submittal.

The reviewers noted that Utah committed to use the NRC Standard Review Plans (SRP) for reclamation plan reviews. In these documents, several analyses are discussed for which no expertise has been demonstrated in the draft application (e.g., the SRP states that HEC1 and HEC2 analyses should be run). The draft application does not discuss this capability and the Utah staff resumes do not contain this information.

Legal Elements:

The draft application does not contain the draft or final regulations. You state that Utah will incorporate NRC regulations by reference. Incorporation by reference is acceptable, but NRC will need to review these regulations prior to submittal of the final application. There are portions of the NRC regulations that are reserved to NRC and are not to be incorporated in the Utah regulations.

The draft legislative language e-mailed to NRC on December 19, 2001 and the revised version e-mailed January 15, 2002 appear to address the necessary statutory authorities. The final application should contain the final legislation.

The reviewers could not clearly identify where in the Utah statute or regulation it states that uranium milling rulemakings are subject to judicial review. Our understanding through conversation is that rulemakings and licensing actions are subject to judicial review. The final application should explicitly discuss the statutory authority for such judicial review and the regulatory references for implementation.

The reviewers noted that R313-17-2(1)(a) will be applied to mill licensing actions and provides for public notice and opportunity to comment on a proposed licensing action. The reviewers could not determine whether hearings were required and whether they will include an opportunity for cross-examination. These licensing actions should also be subject to judicial review, as required in Section 274o of the Atomic Energy Act of 1954, as amended. Please discuss the judicial review process for licensing actions, and confirm that an opportunity for a hearing will always be offered for uranium mill licensing actions.