



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

September 4, 2007

EA 07-207

Mark Moxley, District Supervisor
State of Wyoming
Department of Environmental Quality
Land Quality Division - District II
510 Meadowview Drive
Lander, WY 82520

SUBJECT: RESPONSE TO NRC INSPECTION REPORT 040-04492/07-001 AND NOTICE
OF VIOLATION

Dear Mr. Moxley:

This refers to your letter dated July 12, 2007, submitted in response to our letter and Notice of Violation (Notice) dated June 22, 2007. In your letter, you denied the two violations cited in the Notice. The violations involved the State of Wyoming, Department of Environmental Quality's (WDEQ) failure to implement the groundwater and the settlement monitoring programs in accordance with the requirements of the October 8, 1996, Confirmatory Order (Order).

You explained that WDEQ chose not to fully implement the two programs because of the consistent survey data observed to date and the cost of the programs. You further state that, in accordance with the Order, WDEQ is not required to perform or pay for any reclamation, remediation, monitoring, or surveillance, the cost of which would exceed the amount of money available from American Nuclear Corporation's forfeited reclamation performance bond and any subsequent reimbursements from the U.S. Department of Energy. However, WDEQ did not provide sufficient information indicating that executing the programs would exceed the money currently available. NRC understands that as of August 20, 2007, WDEQ has 1.3 million dollars available in the reclamation performance bond. In addition, WDEQ proposed that this situation might be resolved by modifying the Order to revise (decrease) the groundwater and settlement monitoring and sampling requirements. Finally, you suggested a meeting with the NRC to further discuss this matter.

Using the NRC's enforcement process for disputed violations, we have carefully reviewed your response to our Notice. We have determined that the violations are valid as cited. Further, the Order does not permit WDEQ to modify, suspend, or end any requirement of the Order. Any relief from the conditions of the Order must be sought from the NRC. Since WDEQ did not submit the modifications to the Order to the NRC for review and approval before implementation, the NRC was denied the opportunity to fulfill its responsibility to assess WDEQ's modifications and ensure that they are adequate to protect the public health and safety and to protect the environment.

With regard to your proposed resolution, the NRC is willing to consider a revision to the Order, but any request for changes to the Order has to be processed similar to licensing actions. Please submit your proposed changes to the NRC's Office of Federal and State Materials and

State of Wyoming
Dept Environmental Quality

-2-

Environmental Management Programs, Division of Waste Management and Environmental Protection, Decommissioning and Uranium Recovery Licensing Directorate, Uranium Recovery Branch. We suggest you provide a technical justification as well as an assessment of the impacts to the environment, if any, for each proposed change. In the interim, the NRC expects you to implement the conditions of the Order as written until the NRC receives and makes a decision on any request for a revision to the Order or relief from specific conditions of the Order.

With regard to your request for a meeting with the NRC, we will discuss such a meeting with you under separate correspondence. Please be advised that the meeting will be open for public observation, unless you request and justify why the meeting should be closed to members of the public.

Finally, your response did not fully address the NRC's request for corrective actions to prevent recurrence and a timetable for the implementation of all corrective actions. Therefore, you are requested to provide this information to the NRC in writing within 30 days of the date of this letter or during the public meeting, if a meeting is subsequently scheduled.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at www.nrc.gov/reading-rm/adams.html. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Should you have any questions concerning this letter, please contact Dr. D. Blair Spitzberg, Chief, Fuel Cycle & Decommissioning Branch, at (817) 860-8191 or Mr. Robert J. Evans, Senior Health Physicist, at (817) 860-8234.

Sincerely,
/RA/

Leonard D. Wert, Director
Nuclear Materials Safety Branch

Docket No.: 040-04492
License No.: SUA-667

cc w/letter dated July 12, 2007:
Thomas C. Pauling, Team Leader
U.S. Department of Energy
Office of Legacy Management
2597 B 3/4 Rd.
Grand Junction, CO 81503

Scott W. Ramsay
Wyoming Radiation Control Program Director
Radiological Services Supervisor
Wyoming Office of Homeland Security
2421 E 7th Street
Cheyenne, WY 82001

State of Wyoming
Dept Environmental Quality

-3-

DISTRIBUTION via e-mail:

C Maier	Vasquez - GMV	MHFliegel, FSME/DWMEP/DURLD
L McLean	Mallett - BSM1	WVonTill, FSME/DWMEP/DURLD
P Gwynn - TPG	Spitzberg - DBS	
K Fuller - KSF	Whitten - JEW1	
L Wert - LXW1	B Evans - RJE	
M Herrera	L Gersey - LMP1	
C Cain - CLC	FCDB File	
S. Merchant - OE	Suzanne Woods, OE	
RITS Coordinator	RIV Nuclear Materials File - 5th Floor	

SUNSI Review Completed: RJE ADAMS: ☒ Yes ☐ No Initials: RJE
☒ Publicly Available ☐ Non-Publicly Available ☐ Sensitive ☒ Non-Sensitive

DOCUMENT NAME: s:\dnms\!fcdb\!rje\70449201-NOV Response.wpd final r:_dnms

RIV:DNMS:FCDB	DNMS:NMIB	FSME:DWMEP	C:FCDB
RJEvans*	RJEvans*	MHFliegel [via e-mail]	DBSpitzberg
/RA/	/RA/	/RA RJEvans for/	/RA/
07/ 31 /07	07/ 31 /07	07/ 31 /07	08/14/07
ACES		DNMS:D	
MVasquez		LDWert	
/RA MCMaier for/		/RA/	
08/14/07		09/04/07	

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

*previously concurred