



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
July 9, 2010

Ms. Sarah M. Fields
Program Director
Uranium Watch
P. O. Box 344
Moab, Utah 84532

SUBJECT: Concerns You Raised to the U. S. Nuclear Regulatory Commission
Regarding Colorado's Department of Public Health and Environment
Agreement Program and Atomic Energy Act State Compliance
Requirements - FSME-2010-AS-0008

Dear Ms. Fields:

The U. S. Nuclear Regulatory Commission (NRC) has concluded its inquiry into the concerns you raised in your letters to Mr. Duncan White dated March 23, 2010 and April 7, 2010, your email dated April 9, 2010, and in the telephone meeting that occurred in early May 2010, in which you raised questions regarding Colorado's process for public participation during licensing decisions regarding uranium recovery operations. The concerns you raised and our responses are provided in the enclosure.

Thank you for informing us of your concerns. We believe that our actions in this matter have been responsive. Closure of an Agreement State concern does not prevent us from revisiting it, especially if we obtain new information. This process is an important source of information in support of the NRC's safety mission. The NRC staff takes its safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. Unless the NRC receives additional information that suggests that our conclusions should be altered, we plan no further action on this matter.

Should you have any additional questions, or need further assistance in this matter, please contact Mr. Duncan White on (301) 415-2598 or email duncan.white@nrc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Thaggard", is positioned above the typed name.

Mark Thaggard, Deputy Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials and
Environmental Management Programs

Enclosure:
Statement of Concerns & NRC Responses

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RETURN RECEIPT REQUESTED

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ENCLOSURE

FSME-2010-AS-0008

STATEMENT OF CONCERNS & NRC RESPONSES

Concern 1:

The plain language of the statute requires that an Agreement State provide a notice and opportunity for written public comment on a proposed 11e.(2) byproduct material license or license amendment, provide for a public hearing with a transcript, and make the Agreement State's written environmental analysis of the proposed licensing action available to the public prior to such notice and public comment opportunities. My understanding of the provisions for "a public hearing, with a transcript" refers to a public hearing to take oral comments from any member of the public, not an adjudicatory proceeding under an Agreement State's administrative procedures. Clearly, Congress intended that the public have an opportunity to review the Agreement State's environmental analysis of a proposed agency action prior to and in conjunction with an opportunity to provide written and oral comments on a proposed licensing action.

NRC Response:

This is correct. The Rules and Regulations Pertaining to Radiation Control for the State of Colorado (6 CCR 1007-1, Part 18.6) do provide for the aforementioned items. More specifically, 6 CCR 1007-1, Part 18.6.2.1 provides notice and opportunity for written public comment on a proposed material license or license amendment. In addition, 6 CCR 1007-1, Part 18.6.1 and CRS 24-4-104 provide for a public hearing and transcript. Also, 6 CCR 1007-1, Part 18.4.1 makes the State of Colorado's written environmental analysis of the proposed licensing action available to the public at the time of public notice of hearing.

Concern 2:

The process also requires two public meetings to be held by the licensee or prospective licensee to receive public comments, which are forwarded to the CDPHE RAM. This comment process happens **prior** to the development and release of the CDPHE environmental analysis that is required under Section 2021(o)(C).

NRC Response:

This is correct. These public meetings are for the State to gather information that will be considered in the development of their environmental analysis and are in addition to the required hearing discussed in the response above.

Concern 3:

Pursuant to Colorado rule 6 CCR 1007-1, RH 18.6, after the CDPHE makes a decision on proposed licensing action, there is then a notice and an opportunity for interested persons to request a formal adjudicatory proceeding. As with many state adjudicatory proceedings, an interested person must establish standing.

NRC Response:

This is correct. An interested person must establish standing, however, the definition of standing in Colorado is not very restrictive, and would not prevent someone from a State other than Colorado from participating in a hearing. Colorado's regulations in 6 CCR 1007-1, Part 18.6 provides guidance on establishing standing.

Concern 4:

There does not appear to be any Colorado statute or regulation that established procedures for a public participation process whereby there is a notice and opportunity for the public to submit written comments or provide oral comments at a public hearing on the CDPHE's environmental analysis or proposed license or license amendment for uranium recovery operations, as required by the Atomic Energy Act.

NRC Response:

As stated above, the State of Colorado does provide for such a hearing and procedures do exist and are described in Colorado's regulations in 6 CCR 1007-1, Parts 18.6.6.2, 18.6.6.3, and 18.6.6.4. Colorado will accept written comments up to the time the final license is issued.

Concern 5:

There are no procedures for requesting an opportunity for a public hearing to provide oral comments after the environmental analysis has been made available, nor procedures that require the CDPHE to respond in writing to those comments.

NRC Response:

As stated above, Colorado's regulations in 6 CCR 1007-1, Parts 18.6.6.2, 18.6.6.3, and 18.6.6.4 provide for oral comments. Section 274o of the Atomic Energy Act and 10 CFR 150.31 of NRC's regulations do not require Agreement States to provide written responses to oral or written comments. The State of Colorado may do so at its own discretion.

Concern 6:

In other words, the public has no opportunity for comment unless someone objects to the CDPHE's final proposed license in the context of an adjudicatory hearing. Adjudicatory hearings cost money and require the establishment of standing.

NRC Response:

This statement is not true. Colorado's regulations in 6 CCR 1007-1, Part 18.6 does provide the public (both those for or against the proposed action) an opportunity to comment after publication of the State's environmental analysis and prior to issuance of the final license.

Regarding statements addressed to the NRC staff during a phone call concerning upcoming changes in Environmental Protection Agency (EPA) policies, NRC staff met with Loren Setlow of the EPA during the 2010 Uranium Recovery Workshop in Denver, Colorado the week of May 24. There were discussions involving uranium and thorium milling regulations, and the EPA is aware of current NRC positions discussed in the responses above.

NRC Conclusion:

The NRC could not substantiate your concerns regarding inconsistencies between the requirements of the Atomic Energy Act with respect to the NRC Agreement State programs and the program of the CDPHE. In addition, the staff has not found any inconsistencies pertaining to the noticing and comment provisions related to licensing decisions for 11e.(2) byproduct material operations. The staff has determined that CDPHE laws and regulations are complying with the Atomic Energy Act Agreement State requirements.