

Branch Evaluation, Plan & Recommendation

Agreement State Performance Concern Number: FSME-2011-AS-0004

Facility Name:	AGREEMENT STATE:	Colorado
Responsible Div: MSSA	ARB Date:	March 7, 2011
TIME OF ARB: 3:30 pm	LOCATION OF ARB: RPDC T8C5c	CALL IN: (888) 469-0987 69184#
Overall Responsible Branch:	Agreement States Program Branch	TECHNICAL STAFF: S. Poy/ D. Sollenberger

<u>Received Date</u>	<u>30 Days</u>	<u>70 Days</u>	<u>90 Days</u>	<u>120 Days</u>
2/14/2011	3/16/2011	4/25/2011	5/15/2011	6/14/2011

Purpose of this ARB:	Initial				
Basis for a Subsequent ARB:					
Does the Allegor OBJECT to the NRC requesting that the licensee/State formally assess/evaluate the concern(s)?		Yes	<input checked="" type="checkbox"/>	No	N/A
If any of the following factors apply, this allegation shall not be submitted to a licensee for investigation or review.					
<input type="checkbox"/>	Information cannot be released in sufficient detail to the licensee without compromising the identity of the allegor or confidential source.				
<input type="checkbox"/>	The licensee could compromise an investigation or inspection because of knowledge gained from the discussions.				
<input type="checkbox"/>	The allegation is made against the licensee's management or those parties who would normally receive and address the allegation.				
<input type="checkbox"/>	The basis of the allegation is information received from a Federal or State agency that does not approve of the information being released.				
ARB PARTICIPANTS					
ARB Chairman:	M. Thaggard	J. Luehman	S. Poy		
OAC:	C. Brown	D. White	R. Browder		
OI:	P. Jefferson	D. Sollenberger			
OGC:	P. Jehle	R. Erickson			

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Concern: 1	
Responsible Branch: ASPB	*Code or Functional Area:
*OI Investigation Priority: N/A	*Discipline:
*OI Priority Basis:	
OI Case Number:	

Concern: (A concern is one or two sentences.)

The Colorado Department of Public Health and the Environment (CDPHE) has not issued a public notice announcing an opportunity for the public to submit comments and participate in a public hearing regarding the issuance of a license for the new Piñon Ridge Uranium Mill and the Environmental Impact Analysis.

Concern Background, Supporting Information, & Comments:

Previously, the CI claimed that Colorado regulations were not compatible with NRC regulations and that Colorado was not properly providing the public an opportunity for comment when issuing licenses for uranium mills. This was determined to be incorrect.

Currently, it is the CI's understanding that on January 5, 2011 the CDPHE announced their approval of a radioactive materials license for the proposed Energy Fuels Resources Corporation Piñon Ridge Uranium Mill in the Paradox Valley, Montrose County, Colorado, and issued the Environmental Impact Analysis.

- 1.) Based on this and the CI's interpretation of The Rules and Regulations Pertaining to Radiation Control for the State of Colorado (6 CCR 1007-1, Part 18.6), it is the CI's claim that CDPHE has not issued a public notice announcing an opportunity for the public to submit comments and participate in a public hearing regarding the issuance of a license for the new Piñon Ridge Uranium Mill and the Environmental Impact Analysis. It is the overall concern from the individual that CDPHE has no intention to provide an opportunity for public hearing and comment.
- 2.) The CI also claims that CDPHE has failed to provide the public with the opportunity to request a formal adjudicatory proceeding.

Actions:

With regard to the above claims, the CI requests that the following actions be taken:

- 1.) Make a determination that the CDPHE failed to comply with the applicable notice, comment, and hearing requirements in 42 U.S.C. §2021(o)(3)(A) for the Piñon Ridge Uranium Mill.
- 2.) Order the CDPHE to immediately notice a 60-day opportunity for the public to provide comments on the Environmental Impact Analysis and draft license for the Piñon Ridge Uranium Mill, as contemplated by 42 U.S.C. §2021(o)(3)(A).
- 3.) Order the CDPHE to immediately notice a public hearing on the Environmental Impact Analysis and draft license for the Piñon Ridge Uranium Mill, as contemplated by 42 U.S.C. §2021(o)(3)(A) to take place in the Paradox Valley at least 45 days from the date of public notice.
- 4.) Take appropriate enforcement action if the CDPHE fails to issue a public notice to provide for a public hearing and opportunity for public comment on the Environmental Impact Analysis and draft license for the Piñon Ridge Uranium Mill.
- 5.) Undertake a full review of the CDPHE previous license amendments for uranium recovery

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Concern: 1

facilities and the public notices and opportunities for public comment and a public hearing that accompanied the issuance of those license amendments and related environmental analyses.

NOTE:

On March 3, 2011, staff received documents from the State of Colorado regarding a similar case by the Sheep Mountain Alliance who are suing the State for a similar concern. Colorado has made a motion to dismiss the case and a Judge will make a decision within a month.

Regulatory Requirement: (fill in below)

The Atomic Energy Act 42 - U.S.C., Chapter 23, Section 2021 (o) states,

In the licensing and regulation of byproduct material, as defined in section 11e. (2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require –

(3) procedures which –

(A) in the case of licenses, provide procedures under State law which include

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript . . .

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be made available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment.

*Safety Significance:

HIGH



Normal

Low

Basis: Describe the concern's safety significance below (current, on going issue; level of individual(s) involved; etc.)

The concerned individual claims that Colorado is failing to comply with its own regulations and not properly holding public meetings to provide to public the opportunity to comment during the licensing process. In response to the allegation the CI requests that the NRC review previous Colorado uranium mill licensing to determine if this is an on-going issue.

Check each question as applicable to this concern.



Is it a declaration, statement, or assertion of impropriety or inadequacy? Is there a potential deficiency?

Is the impropriety or inadequacy associated with NRC regulated activities?



Is the validity of the issue unknown?

If all of the above statements are checked, the issue is an allegation.

Technical Staff Recommendation(s)

Date	*Recommended Action	Assigned Branch	Planned Date
3/7/11	Wait for outcome of litigation before NRC takes any actions.	-	TBD

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NOTE: Attach Draft NOV, RFI questions/requests, and/or an inspection plan as a separate document if necessary.

★ Discussion of RFI Recommended Action as Appropriate per AGM 2008-01		YES:	NO:
ARB Date	ARB Decision(s)	Assigned to	Accepted Planned Date
3/7/11	Schedule a conference call with the state to get an understanding of how they implement their regulations regarding public hearings. OGC will participate in the call.	ASPB	3/18/11
3/7/11	Reconvene the ARB after the conference call to determine next steps.	OAC	TBD

ARB Chairman

Approval: 

Date: 3/8/2011