

## McIntyre, David

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**From:** McIntyre, David  
**Sent:** Friday, March 16, 2012 2:31 PM  
**To:** Burnell, Scott; White, Duncan; Poy, Stephen; McDermott, Brian  
**Subject:** RE: CDPHE and NRC

Sometimes more than others ... ;-)

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**From:** Burnell, Scott  
**Sent:** Friday, March 16, 2012 2:24 PM  
**To:** McIntyre, David; White, Duncan; Poy, Stephen; McDermott, Brian  
**Subject:** RE: CDPHE and NRC

Don't we always?

-----Original Message-----

**From:** McIntyre, David  
**Sent:** Friday, March 16, 2012 2:24 PM  
**To:** Burnell, Scott; White, Duncan; Poy, Stephen; McDermott, Brian  
**Subject:** RE: CDPHE and NRC

I especially like the part about "responding appropriately to media questions ... "

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**From:** Burnell, Scott  
**Sent:** Friday, March 16, 2012 1:58 PM  
**To:** White, Duncan; McIntyre, David; Poy, Stephen; McDermott, Brian  
**Subject:** RE: CDPHE and NRC

Edited version --

The NRC has discussed the issue of a hearing regarding the Pinon Ridge mill license with the State of Colorado for the past year. Separately, an individual used the NRC's Allegations program to raise a concern regarding the license and whether a hearing was required under the Atomic Energy Act. After considering all the available information, including filings in the lawsuit over the license, the NRC concluded the evidence supports the individual's concern. The NRC has an obligation to provide that conclusion to the individual. The NRC has responded appropriately to media questions after the individual released the NRC's conclusion on his own. The State of Colorado indicated to the NRC in August that it would be modifying its regulations to better conform to the Atomic Energy Act, and the NRC's Feb. 27 letter simply asks for more details on how the state will proceed. The NRC has received the state's March 7 letter and will reply as appropriate.

**From:** Smith, Warren [<mailto:Warren.Smith@dphe.state.co.us>]  
**Sent:** Friday, March 16, 2012 12:11 PM  
**To:** [bob.silbernagel@gjsentinel.com](mailto:bob.silbernagel@gjsentinel.com)  
**Cc:** Salley, Mark W.  
**Subject:** CDPHE and NRC

Bob: I understand you are interested in our statement on the NRC's inappropriate handling of issues related to the Piñon Ridge mill. Here it is, attributable to me:

A March 6 letter from Nuclear Regulatory Commission was surprisingly, and inappropriately, sent directly to a party that is suing the state over its issuance of a radioactive materials license to Energy Fuels. Following a robust public process, including two public hearings and six additional public meetings, the radiation program of the Colorado Department of Public Health and Environment issued the license to Energy Fuels on Jan. 5, 2011.

Now comes the NRC, which never formally expressed concerns about the public hearing process established by the state, with a letter to a litigant seeming to support its claim that the public hearing process was somehow insufficient. The NRC has been stunningly inconsistent on the public hearing issue. We raised the issue with NRC on several occasions around the application process and 2010 program review. As recently as the October 2011 NRC review of the Colorado statute and regulations, no incompatibility or corrective action was identified. Later, we believe federal officials flip-flopped and said they were reconsidering their answer.

On Feb. 27 NRC officials sent a letter to the radiation program of the Hazardous Materials and Waste Management Division that misstated our previous conversations with them, giving us until the end of March to respond. We asked for clarification on March 7, only to learn the NRC already had announced its predetermined decision in the March 6 letter without communicating this information directly to the state!

The Department understands that even though it is not required under state law, Energy Fuels proposed to the Sheep Mountain Alliance an opportunity for a hearing that was rejected.

Now the NRC is criticizing the state of Colorado in the press – even though it still has not issued a formal determination in the matter. This disappointing situation has caused severe damage to the state's previously productive working relationship with the Nuclear Regulatory Commission. For a federal agency to come along at this late date and appear to muddy the waters is an outrage to all the community members, stakeholders and others who took the time to participate in the public process regarding the radioactive materials license.

Warren Smith, APR  
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