

DEC 26 1979

Ref: SA/RO

MEMORANDUM FOR: Norman M. Haller, Director
Office of Management and Program Analysis

FROM: Robert G. Ryan, Director
Office of State Programs

SUBJECT: RESPONSES TO QUESTIONS CONTAINED IN UDALL TO HENDRIE LETTER
OF DECEMBER 6, 1979

As agreed upon in the meeting of December 13, 1979 on the above subject, we enclose our responses to the questions and comments contained in Congressman Udall's letter. We have listed separately our responses to the general comments of the first three paragraphs of the letter, and our specific responses to the numbered questions of the letter that relate to the functions of this office.

We understand that you will compose the return letter from Chairman Ahearne to Congressman Udall by incorporating our responses and those from other Commission Offices.

If you need any other assistance, please contact G. Wayne Kerr or R. J. Doda on 492-7767.

Robert G. Ryan, Director
Office of State Programs

Enclosure:
As stated

8104230 753

Office of State Programs
Responses to Questions and Comments
Contained in Udall to Hendrie Letter
of December 6, 1979

RESPONSE TO GENERAL COMMENTS

Review of Criteria. A reevaluation of the criteria by which the Commission makes a determination that an Agreement State radiation control program is adequate to protect the public health and safety is being performed on a priority basis. At the present time, comments from Agreement State personnel and Commission staff have been incorporated in revised criteria, which will be utilized by the staff beginning January 1, 1980. The staff will submit a paper to the Commission by January 15, 1980 regarding possible codification of the review criteria. In addition, the Office of State Programs has already initiated action concerning several critical areas in the review criteria by extending greater emphasis, during the review of an Agreement State program, on: (1) procedures for escalated enforcement action, (2) cases involving major or complex licenses that have a potential for a significant release of radioactive materials to the environment and (3) investigation procedures.

Rhode Island Agreement. The Commission entered into a section 274 agreement with the State of Rhode Island when the Commission found the State program compatible with NRC's regulatory program and adequate to protect the public health and safety. The Atomic Energy Act of 1954, as amended, states that the Commission shall enter into an agreement after a finding of compatibility and adequacy, as above. It should be noted, also, that a new Agreement State is provided greater attention and time by Commission staff since the radiation control program is reviewed more frequently than States that have been in agreement status for sometime.

Increase of Technical Resources Available to the Agreement States. The NRC has offered technical assistance to the Agreement States on Uranium Mills, see Federal Register notice (Vol. 43, No. 81, April 26, 1978). As a result of the notice, six States have asked the NRC for such support, New Mexico, Arizona, California, Colorado, Washington and Oregon. It is believed that the State's technical programs would be strengthened if the NRC issued a guide detailing to the States the type of facilities the NRC will offer assistance to and the scope and depth of coverage the NRC is prepared to offer for such assistance, as well as the amount of manpower and dollars the NRC is capable of expending on each type of review.

That the States are willing to seek NRC assistance and that the NRC is willing to assist, is evident in the recent request for assistance from the State of Florida regarding a uranium extraction circuit on a phosphate fertilizer production plant. In this particular instance even though the process is not covered under the mill tailings act as amended, the NRC responded to this request by conducting a short but intensive training course to Florida and Louisiana personnel on techniques to aid the staff in licensing such a facility, requirements for the licensee to conduct a bioassay program for uranium, techniques on how to conduct an investigation involving an uptake of uranium, and techniques for conducting an inspection of such a facility. As part of this training an actual on site inspection was conducted by the State with the assistance of an NRC inspector of a Florida licensee. Members of three NRC offices were involved in this training program: Inspection and Enforcement, Standards Development and State Programs.

It is believed that more specialized training of this nature for Agreement States would lead to strengthening the licensing and compliance activities of such States. The Office of State Programs plans to request the assistance of these and other NRC offices in future training programs for uranium mill licensing.

One other function which would greatly assist the Agreement States would be the formation of a training cadre within OSP. The function of this group would be to provide short intensive training to the Agreement States on matters involving new areas of licensing, problem licensing areas, and licensing techniques for complex, large, or unusual licensing cases. The primary purpose of this group would be to provide information to the Agreement States and to instruct State staff on how to apply this information to the licensing process. We believe this concept has merit because of the success we achieved with the specialized course recently conducted for the State of Florida on uranium circuits in phosphate plants.

RESPONSES TO SPECIFIC QUESTIONS

Question 1. Does the Commission agree with me that it would be productive to involve more fully and formally the Commission's licensing divisions in review of Agreement States' licensing activities?

Response. At the present time, the Commission's offices for licensing, inspection and enforcement, standards development and legal affairs often provide guidance for specific actions taken by Agreement States in the administration of their radiation control programs. SP staff request and secure the appropriate expertise within other Commission Offices to address specific regulatory problems. This type of cooperative effort by the various Commission Offices is necessary to insure that Agreement State programs are compatible with the Commission's regulatory program and are adequate to protect the public health and safety, and to keep the States informed of new NRC regulatory practices and procedures. Taking these efforts into account, SP believes that an expanded role for other offices during the review of Agreement State programs could be beneficial in three general areas: (1) the review of major or complex licensees where a potential exists

for a significant release of radioactive material to the environment, (2) the review of specific cases of investigation and (3) the review of licensing activities on uranium mills and waste burial sites. We believe these areas to be especially important at this time because of the increasing number of complex licensing actions required in the Agreement States while, at the same time, the States are experiencing difficulty in rapidly obtaining highly specialized resources because of problems of budget and legislative support for radiation control programs.

SP does not believe that routine participation by other offices during the review of Agreement State programs is necessary or cost-effective for a State's usual licensing, inspection, enforcement, and administrative activities. Other offices have participated in routine reviews in the past and there was no discernible improvement in the quality of reviews and it was certainly more costly. Furthermore, we believe that other involvement may actually detract from the overall efficiency of the review program,

SP would propose the direct opposite in most cases; namely, more involvement by the Agreement States in the specific licensing, inspection and enforcement activities for which they have applicable experience. We believe the Agreement State radiation control programs have generated, over the years, some measure of untapped experience for and practical solution to radiation control problems. Two current examples may illustrate this point. The first example is the development of well-logging regulations, as a separate part, for incorporation in the Suggested State Regulations for the Control of Radiation (SSRCR). Although the regulations were developed by a task group under the auspices of the Conference of Radiation Control Program Directors

(CRCPD) the bulk of the input came from staff of 2 or 3 Agreement States. The input of information, industrial contacts, and field experience supplied by the States were indispensable in the development of these regulations. The second example, are regulations developed by one Agreement State regarding the testing and certification of industrial radiographers. This new regulatory approach was undertaken by this Agreement State in an attempt to solve a long-recognized and continuing problem in regulating industrial radiography. The extensive activities in industrial radiography in the State provided a basis for developing this regulatory approach. We believe that these and other examples from Agreement States could provide, in some cases, positive input to the Commission's regulatory program.

Question 2. Since the dual licensing arrangement has ended, what role is the Commission playing in reviewing mill tailings impoundments in Agreement States in light of the dam break at Church Rock? What is the status of reviews being carried out by the Agreement States?

Response. We are expecting the completion of an NRC summary report in the near future on the failure of the dam at Church Rock. The report will be provided to all Agreement States so that they can take appropriate actions regarding their reviews of mill tailings impoundments.

It should also be mentioned that staff of SP, NRR, IE and NMSS were dispatched to New Mexico to assist the State in their evaluation of the dam failure at Church Rock and the environmental impacts of the failure.

Question 3. At our hearing on the Church Rock dam failure in October, there was a discrepancy in testimony regarding the State of New Mexico's action on milling and tailings licenses. A State official, Cubia Clayton, testified that because of the

State licensing agency's "other environmental protection mandate and staffing, there is opportunity for a more comprehensive review of license applications than is generally possible at the Federal level." Another witness, representing Southwest Research and Information Center, claimed that although four licenses in New Mexico came up for renewal in 1976, "licenses have not been renewed and the companies are still in operation." The witness, Paul Robinson, also claimed that "New Mexico has never renewed a single uranium mill license in its history of its Agreement State status dating back to 1974."

I understand license renewal to be an important means of reviewing or requiring improvements for milling and disposal operations. What is the Commission's policy regarding relicensing? What is the normal time frame for processing license renewals? What is the status of license renewals in the State of New Mexico? What is the status of license renewals in other Agreement States where uranium milling operations are licensed?

Response. The claim that New Mexico has never renewed a uranium mill license since becoming an Agreement State is true. Upon becoming an Agreement State in 1974, four licenses were turned over to New Mexico and were due to expire in 1976. All four applied for renewal and are in timely renewal status at the present time. As of January 1980, revisions to the State regulations will require significant changes in the mill applicant's environmental report for renewal. New Mexico will review the renewal applications of these four mills under the new regulations of January 1980. One other mill license will expire in July 1980. Regarding new mill applications in New Mexico, two are now under active review and one is under review but not accepted because of deficiencies in the application.

From information obtained from the Agreement States, all actions are in timely renewal or under active review.

Question 4. The Uranium Mill Tailings Control Act requires that Agreement States programs be carried out in a manner equivalent to the Commission's. While there existed dual licensing authority, the Commission was setting licensing requirements for new operations in Agreement States. Since the States have begun carrying out all licensing activities, have substantive licensing requirements remained equivalent to those the Commission had imposed?

Response. The NRC has not yet started reviewing in-depth mill licensing actions of Agreement States as required by the Uranium Mill Tailings Radiation Control Act of 1978. The States are now in the process of attempting to obtain the needed legislation and resources to conduct the type of review required by the passage of the Uranium Mill Tailings Control Act. The NRC's regulations pertaining to uranium mill licensing have not yet been approved. However, the NRC is encouraging the Agreement States to implement the UMTRCA requirements to the extent practicable.

It should also be noted that the Agreement States have informed their mill licensees and applicants that the conclusions of the Generic Environmental Impact Statement and any related rule making may result in new requirements concerning their mill waste generating processes and tailing management practices.

We will, of course, proceed to determine that Agreement States are implementing the provisions of the UMTRCA to the extent practicable.

Question 8. United Nuclear Corporation representatives at our hearing stated that the Church Rock tailings impoundment met "all design criteria established by the NRC, including Regulatory Guide 1.101. Did the Church Rock facility meet all NRC's impoundment design criteria?

Response. The State of New Mexico did arrive at the conclusion that the Church Rock facility met the NRC's impoundment design criteria which existed at the time of licensing.

Phone call
with J. J. [unclear]
on Dec. 11, 71