



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SECRETARIAT RECORD COPY

May 5, 1983

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of April 6, 1983, the basis for the Commission not implementing or enforcing the codified uranium mill licensing regulations (10 CFR Part 40, Appendix A) is as you noted, the Continuing Resolution for fiscal year 1983, Public Law 97-377. Section 101(f) states as follows:

"(f) Such amounts as may be necessary for continuing activities which were conducted in fiscal year 1982, for which provision was made in the Energy and Water Development Act, 1982, at the current rate of operation ... Provided further, that no appropriation or fund made available or authority granted pursuant to this paragraph shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1982 without prior approval of the Committee on Appropriations: ..."

I agree with you that there is no independent and specific legislative history for the Continuing Resolution to indicate that the Congress intended a continuation of the embargo contained in Title IV of the Energy and Water Development Appropriations Act, 1982, Public Law 97-88. However, it is arguable that the plain meaning of the provision in the Continuing Resolution text quoted above was intended to maintain the embargo. Moreover, we do not have an appropriation act which unambiguously provides funds for carrying out Section 275f.(1) of the Atomic Energy Act, as amended by Section 18(a)(4) of the NRC Authorization Act for 1982 and 1983, Public Law 97-415. In view of these uncertainties and the circumstances discussed below, the Commission believes that it would be prudent to obtain prior approval from the Committee on Appropriations before spending funds to implement and enforce the regulations.

The Commission has not sought that approval due in part to the uncertainty created by the provisions in Section 275f.(2) and (3) of the Atomic Energy Act, as amended by Section 18(a)(4) of the NRC Authorization Act for 1982 and 1983, which require the NRC to suspend, by notice and comment procedure, those regulations in conflict with EPA's recently proposed standards for active mill sites. We consider it undesirable to proceed on a course of implementing and enforcing our full set of uranium mill regulations at this time, since we are required

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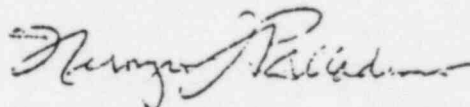
by law to suspend elements of those same regulations no later than 90 days after publication of EPA's proposed standards. Assuming EPA promulgates its final standards by September 30, 1983, and that suspension of conflicting NRC regulations has occurred, the suspension will remain in effect until NRC amends its regulations to conform to final EPA standards or April 1, 1984, whichever occurs first.

The NRC could implement promptly those portions of the regulations that will not be suspended on the basis of conflict as inconsistent with EPA's proposed standards. According to present schedules, however, our suspension will not be final until mid-August 1983, leaving only a short period during which the existing Continuing Resolution would apply. If the appropriations act for FY 1984 funds does not include the spending limits in the Energy and Water Development Appropriations Act, 1982, as of October 1, 1983, there will be no uncertainty regarding the Commission's authority to implement and enforce the unsuspended portions of the codified regulations without first obtaining approval from the appropriations committees.

In the interim, we are continuing to regulate on a case-by-case basis. Where appropriate we rely on existing regulatory guides and staff technical positions, and we perform case-specific environmental and safety reviews where necessary. Although this process is somewhat inefficient, it is necessary in order to continue licensing and to afford proper protection to public health and safety and the environment. However, we see no immediate hazard to the public in the present temporary situation.

For these reasons, the Commission has determined not to take any steps to implement and enforce the mill tailing regulations.

Sincerely,



Nunzio J. Palladino

cc: Rep. Manuel Lujan