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COMMISSIONER

WM Record File
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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555

WM Project _____

Docket No. _____

PDR August 10, 1984
LPDR _____

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DEMOUETTE

MEMORANDUM FOR:

Chairman Palladino

FROM:

James K. Asselstine

SUBJECT:

REVISED MILL TAILINGS IMPLEMENTATION AND ENFORCEMENT
POLICY

I read with interest your August 8, 1984 memorandum to me on this subject and wanted to make a few comments in response. With regard to your first comment, in referring to the August 3, 1984 revised mill tailings implementation and enforcement policy as your revised policy statement, I intended only to recognize that this proposed revision to the policy statement was prepared by OGC pursuant to your specific directions. I appreciate that you have not yet had the opportunity to review the proposed revised policy statement and that it may not reflect your final views on the subject. But it is still my understanding that you directed that OGC prepare the August 3 revised policy statement and that you provided the guidance to OGC on the nature of the revisions.

With regard to your second comment, I find it difficult to accept the proposition that at least your vote to rescind the Commission's approval of the two rulemaking packages was based upon the need to review and approve the final package that was sent to the Federal Register. Your vote sheet (attachment 1) clearly agreed to my proposed statement of the Commission's mill tailings implementation and enforcement policy, which was included with my vote sheet (attachment 2). A simple comparison of my proposed statement, which you agreed with, and the relevant portion of the final package that was sent to the Federal Register demonstrates clearly that only minor, editorial changes were made to my proposed statement (a marked up copy showing the differences between my proposed statement and the language in the final package is attached - attachment 3). Given the fact that no substantive changes whatsoever were made in incorporating my proposed statement into the final package, I see no great significance in the fact that you did not have the opportunity to see the final package before it was sent to the Federal Register. I think it is also fair to point out, as I did in my August 6 memorandum, that the changes that were made in the August 3 revised policy statement, which was prepared at your direction, are both significant and substantive. The August 3 proposed revised policy statement would greatly weaken the Commission's position on the question of EPA's jurisdiction and would postpone the Commission's implementation and enforcement of the EPA standard.

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I also find your explanation of the reason for your vote to rescind the Commission's decision in this matter to be somewhat at odds with our discussion on August 1. During our meeting, you began by saying that the reason for the meeting to discuss the mill tailings rulemaking package was that Senator Simpson's staff had called your staff to say that Senator Simpson was very angry with the Commission's decision on the implementation and enforcement policy. You pointed out that the rulemaking package had not yet been printed in the Federal Register, and you asked what I thought the Commission should do about the rulemaking package in light of this communication from Senator Simpson's staff. You also mentioned that one possible reason for recalling the rulemaking package could be that not all Commissioners had seen the final package before it was sent to the Federal Register although the staff requirements memorandum called for Commission review and approval of the final package. I must say that it was abundantly clear to me that your principal concern in this matter was the communication from Senator Simpson's staff.

Apparently, my perception was shared by other Commissioners who met subsequently with you on August 1. Later that afternoon, you described Commissioner Roberts' position in support of recalling the final package from the Federal Register as being that since Senator Simpson was one of our few friends on the hill, the Commission should do what it can to help him on this. As you will recall, on both occasions on August 1, I expressed the view that we should not recall the documents in response to Congressional pressure. Given the foregoing, I have some difficulty in understanding both your explanation for your vote to rescind the Federal Register notice and your direction to OGC to prepare the August 3 revised implementation and enforcement policy.

Attachments: As stated

cc: Commissioner Roberts
Commissioner Bernthal
Commissioner Zech
OGC
OPE
LEDO
OCA