



State of New Mexico

Office of the Natural Resources Trustee

40-8907

GARY E. JOHNSON
Governor

Dr. William M. Turner, Trustee
Steven Cary, Deputy Director
Charles de Saillan, Counsel

November 12, 1996

Albert Hale
President
The Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515

RE: United Nuclear Corporation uranium mill, Church Rock, New Mexico

Dear President Hale:

I am writing to bring an important matter to your attention. The issue involves the Navajo Nation's trusteeship, for natural resources under their jurisdiction, pursuant to authority granted by the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

United Nuclear Corporation (UNC) formerly operated a uranium processing facility in Pipeline Arroyo, north of the community of Church Rock, in McKinley County, New Mexico. Operations there resulted in contamination of lands, surface waters and ground water. State and tribal natural resources may have been injured by the contamination, possibly resulting in recoverable damages. A cleanup is now being conducted by UNC under the authority of CERCLA and is being jointly overseen by the US Environmental Protection Agency (USEPA), the US Nuclear Regulatory Commission (USNRC), the New Mexico Environment Department (NMED), and the Navajo Nation Environmental Protection Agency, Superfund Program (NSP).

Progress of the ground-water cleanup in certain aquifers has been slow, and UNC's experts claim that attainment of ground-water cleanup standards developed by USEPA, USNRC, NMED and NSP will be technically impracticable. Experts from the regulatory agencies are considering the evidence presented by UNC, and could agree to waive or relax these cleanup standards if attainment is technically impracticable.

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Trustees for natural resources have authority that has not yet been exercised in this case. Under CERCLA, the trustees for this site include the State of New Mexico, through its Office of the

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Natural Resources Trustee (ONRT), and the Navajo Nation. By exercising their authority now, the natural resource trustees may be able to forge a solution that gets the best results for our citizens and the environment.

Trustees are authorized to evaluate and determine economic damages to natural resources that were injured at the Church Rock mill site and to bring claims against UNC to recover those damages. If the trustees file their claims and a court awards damages, or if a settlement is reached with UNC, the award or settlement monies must be used to restore or replace the injured resources, such as ground water, or the services provided by that resource. Alternatively, UNC may undertake a resource restoration project that is satisfactory to the trustees.

USEPA and USNRC have the authority to relax or waive any cleanup standards that are technically impracticable to achieve. Such a decision would mean that some ground-water aquifers at the UNC site would be left contaminated and unusable for many years into the future, perhaps forever. Such a result, however, could mean that the trustees would have a larger claim for natural resource damages. A natural resource damage claim would be one way for people living in the area, and future residents, to be compensated for the loss of those water resources.

For your consideration, I recommend that the trustees (ONRT and the Navajo Nation) officially and jointly notify the other parties (UNC, USEPA, USNRC, NMED) that the trustees have a substantial claim for natural resource damages in this case. At a minimum, notice of a natural resource damage claim may encourage UNC to continue its cleanup efforts, and perhaps those efforts eventually would succeed. On the other hand, if UNC continues to argue that full cleanup is impracticable and the regulatory agencies agree, then the trustees' damage claim becomes more significant. UNC should be advised that an incomplete cleanup at this site could result in a larger claim for damages by the trustees.

The result of a successful natural resource damage claim, whether litigated or settled, could be one or more natural resource restoration or replacement projects funded by UNC. For example, my staff has discussed with NSP staff the possibility of a UNC-funded ground-water project in place of unsuccessful cleanup efforts. USEPA and NMED are open to discussing this approach and have asked that ideas for restoration projects be forwarded to them in the near future.

I have been advised that a USEPA decision to issue a waiver of cleanup standards based on technical infeasibility would require acceptance by the State of New Mexico and the Navajo Nation. If the State and the Navajo Nation accept such a waiver, acceptance should be conditioned upon a satisfactory settlement of our natural resource damage claims.

It is important that the trustees quickly bring this issue to the table. We have heard rumors of an impending UNC bankruptcy, which only increase that urgency. I would like to discuss with you

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the possibility of a meeting between the trustees, perhaps including the regulatory agencies, for the purpose of moving this issue forward. Please have your representative call me at (505) 843-7643, or Mr. Steven Cary of my staff at (505) 827-1035. I look forward to hearing from you in the near future.

Sincerely,

Dr. William M. Turner
Natural Resources Trustee

cc: Gerri Harrison, Office of the President, The Navajo Nation, Window Rock, AZ
Bennie Cohoe, Navajo Nation Environmental Protection Agency, Window Rock, AZ
Diane Malone, Navajo Superfund Program, Window Rock, AZ
James Bellis, Navajo Department of Justice, Window Rock, AZ
Don Williams, US Environmental Protection Agency, Dallas, TX
Ken Hooks, US Nuclear Regulatory Commission, Washington, DC
Mark Weidler, New Mexico Environment Department, Santa Fe, NM
Charlie de Saillan, New Mexico Attorney General's Office, Santa Fe, NM
Glenn Sekavec, US Department of the Interior, Regional Env. Office, Albuquerque, NM
Wilson Barber, Bureau of Indian Affairs, Navajo Area Office, Gallup, NM