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PDR

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

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April 20, 1984

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MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

FROM: Nunzio J. Palladino *NJP*

SUBJECT: TENTATIVE RECOMMENDATIONS CONCERNING MILL
TAILINGS RESULTING FROM MEETING ON
APRIL 19, 1984

As we had previously agreed, Commissioner Asselstine and I met with members of the staff in order to arrive at a recommended course of action relative to mill tailing issues currently before the Commission. Sheldon Trubatch from OGC also participated in the discussions. Attached for your review is a set of draft recommendations for an overall course of action that resulted from the meeting.

I am requesting that you review the draft and provide my office with your comments by April 25. I will compile the comments and circulate a final draft for review by April 30.

At the meeting, the staff committed to provide two additional documents for our review. These are: 1) draft letter informing Congress of our intended course of action; and 2) a conceptual outline of a memorandum of understanding that I would sign for the Commission with Administrator Ruckelshaus. The staff recommended, and Commissioner Asselstine and I concurred, that the letter to Congress would be jointly signed by me and Administrator Ruckelshaus. I will circulate these two documents at the same time that I circulate the final draft recommendations on the course of action.

Enclosure: As stated

cc: OGC
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Draft Tentative Recommendations from NRC Deliberations on
April 19, 1984 Regarding an Overall Course of Action for
Resolution of Mill-Tailing Issues Before the Commission

I. General

The most important feature of the meeting is that, because of progress made to date in negotiations between NRC and EPA staffs, there is optimism on working out suitable arrangements between EPA and NRC regarding flexibility on groundwater and liner requirements.

Based on the staff negotiations carried on thus far, we believe that the following premise for proceeding with NRC actions seems reasonable.

II. Premise

The draft tentative recommendations presented herein are based in large part on achieving the following agreements with EPA.

1. That EPA and NRC would agree to a delay in implementation and enforcement of RCRA based groundwater requirements (this may require an EPA rulemaking extending over 3 to 6 months) long

enough to permit development by NRC of its confirming rule. During the intervening period until NRC's final rule is in place, EPA and NRC will agree on:

- (a) a protocol stating the methodology under which NRC will proceed to make decisions on the type of liner needed at a particular uranium mill tailings site; and
 - (b) a protocol under which NRC can establish alternate concentration limits for off-site contamination at a particular site without EPA concurrence.
2. Issuance of a joint NRC-EPA letter to Congress signed by EPA Administrator and NRC Chairman (after Commission approval) confirming the above.
 3. With eventual implementation of the above in NRC rules which requires EPA concurrence, NRC would not need to get further EPA concurrence on any of its licensing actions.

III. Proposed Recommendations for NRC Action

1. It is recommended that we pursue the following approach to NRC rulemaking:

- (a) Issue for comment, as soon as possible, a proposed rule conforming NRC regulations to EPA standards on radon emanation and tailings pile stabilization (Enclosure A-2 of the Dircks memorandum dated March 2, 1984). Enclosure A-2 is the minimum conforming change recommended by OGC and does not delete a number of the prescriptive provisions that were suspended prior to April 1, 1984. It should be modified to eliminate the present 3 meter of cover prescriptive requirement as agreed to by OGC in their March 14, 1984 memorandum. The proposed rule in Enclosure A-2 would also emphasize NRC willingness to consider alternative approaches proposed by licensees, consistent with the Act. This rulemaking will be scheduled for completion within approximately six months.

(b) Issue for comment an advance notice of proposed rulemaking (ANPRM) on conforming NRC regulations to EPA standards referencing RCRA requirements on groundwater and liners. (Enclosure B of SECY-83-523). This ANPRM should also include a specific request for comments on the need to consider further modifications to the prescriptive requirements which were retained in the rulemaking noted in 1(a) above.

(i) After receipt of public comments on the above, prepare and issue for comment a proposed composite rule on groundwater, liners, monitoring, and any additional modifications to the prescriptive requirements applicable to radiological emanation, and pile stability retained in the rulemaking noted in 1(a) above.

(ii) This rulemaking will be scheduled for completion within approximately 3 years.

2. Get Commission approval on the following issues prior to Chairman's meeting with EPA Administrator scheduled for May 8, 1984.
 - (a) Proposed approach to rulemaking.
 - (b) Concept of MOU to be negotiated along the lines outlined in the Premise stated above (item II).
 - (c) Signing of joint NRC-EPA statement - to be sent to Congress on item II-2.
 - (d) A Commission tentative view that it does not intend to challenge EPA jurisdiction (provided that progress continues toward reasonable resolution of issues with EPA as described above.) Thus the Commission would not now take part in the AMC lawsuit against EPA. This approach leaves open the question of whether NRC believes that the EPA standard exceeds EPA's jurisdiction under UMTRCA.

IV. Contingency Considerations

If an MOU cannot be developed to the satisfaction of the NRC, we would:

1. still go ahead with proposed rulemaking as described in III;
2. continue with our current groundwater monitoring and mitigating program; and
3. still make case specific decisions on granting exemptions on details of groundwater monitoring and mitigating programs and on liner requirements without seeking EPA concurrence; and
4. give further consideration to whether EPA has exceeded its jurisdiction, together with possible legal remedies and strategies, including legislative requests.