



STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT DIVISION

P.O. Box 968, Santa Fe, New Mexico 87504-0968
(505) 984-0020

TONY ANAYA
GOVERNOR

DENISE D. FORT
DIRECTOR

AB50-2

PDR

PR 40

49 FR 46418

STATEMENT
OF
DENISE D. FORT
DIRECTOR
STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT DIVISION
CONCERNING
URANIUM MILL TAILINGS REGULATIONS
BEFORE THE
U. S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.

September 10, 1985

EQUAL OPPORTUNITY EMPLOYER

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Mr. Chairman and Members of the Nuclear Regulatory Commission: I am Denise Fort, Director of the New Mexico Environmental Improvement Division (N.M. EID). I appreciate this opportunity to present the State of New Mexico's views on the subject of uranium mill tailings regulation. We have discussed this subject with the other three Agreement States for uranium mill licensing (the States of Colorado, Texas, and Washington), and all support quick action by the NRC to promulgate final regulations for tailings disposal.

Uranium mill tailings are of great concern to New Mexico. There are presently about 84 million tons of tailings at five licensed uranium mills in the state. These tailings comprise some 45% of all tailings at "active" uranium mill sites in the United States, as defined in the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

We do not concur with the contention that uranium mill tailings are no more hazardous than ordinary, non-radioactive mine wastes. The many health and environmental concerns include both radiological and non-radiological components. The tailings will remain radioactive for many thousands of years, with all nuclides of the uranium decay series (except uranium) present at about the same activity as originally in the ore. The milling and leaching process changes the material both physically and chemically to greatly increase the potential for spread of chemical and radiological contamination outside the tailings disposal site.

Existing and past problems at New Mexico tailings sites demonstrate the need for isolation and stabilization of uranium mill tailings materials. All five "active" mill tailings sites have ground water contamination problems that have necessitated remedial or preventive measures. Two of these sites have been placed on the National Priorities List under the Superfund Program because of the ground water contamination problems. Major tailings dam failures have occurred at these same two facilities, and in one case caused contamination of more than 70 miles of river (including areas in the adjacent State of Arizona). Blowing tailings material has been observed at each of the "active" sites in New Mexico.

The State of New Mexico supports the incorporation by the Nuclear Regulatory Commission (NRC) of the Environmental Protection Agency (EPA) general environmental standards into NRC requirements for uranium mill licensing. The N.M. EID has independently conducted legal research into the question of whether the EPA standards for "active" tailings sites are now legally in effect and must be enforced against licensees of NRC and the Agreement States. We concur with NRC counsel that under 42 U.S.C. Sec. 2022(d), NRC and the Agreement States have both the power and duty to enforce EPA's "active" site standards, at least to the extent thus far prescribed in NRC memoranda to the Agreement States. However, the uranium industry is vigorously resisting the implementation of the EPA standards in this fashion, and we urge the Commission to move as quickly as possible to adopt the EPA standards into the NRC regulations.

As discussed further below, the present state of the uranium industry and the existing financial sureties for tailings reclamation by both NRC and Agreement State licensees create an urgency that did not exist only a few years ago. The closures of most of the uranium mills in New Mexico and throughout the United States have made it critical that both industry and the responsible regulatory agencies know where they stand with respect to final reclamation and ground water protection requirements.

The N.M. EID supports the EPA general standards for uranium mill tailings as being necessary to protect human health and the environment, and generally adequate. The standards appear to be a reasonable compromise between the very lax requirements advocated by the uranium industry, and the even more restrictive requirements originally promulgated by the NRC in 1980. Whether we agree with the EPA standards or not, however, the EID believes that Congress has clearly expressed its intention that, with certain limited exceptions, the generally applicable EPA standards shall be adopted and enforced by NRC and the Agreement States. Therefore, the Commission is not at liberty to substitute its own judgment for that of EPA, insofar as the substance of the EPA standards is concerned. Under the statutory framework established by Congress at 42 U.S.C. Sections 2022(b) and (d), EPA has been given the primary standard-setting role, while the task of NRC and that of the Agreement States is to implement and enforce EPA's standards, with due regard to special considerations that may be peculiar to particular sites and licensees. Consequently, NRC and the Agreement States have no alternative but to adopt and enforce EPA's standards.

The N.M. EID does not agree that there are serious, unresolved disputes as to the appropriate jurisdictional boundaries between NRC and EPA. This contention appears only to be a tactic to further delay promulgation of final requirements for uranium mill tailings disposal. Congress has taken considerable care to specify the respective roles that NRC and EPA shall play, not only in the original 1978 UMTRCA legislation, but also in subsequent amendments to that legislation.. There are in fact very few areas of dispute between NRC and EPA as to how Congress intended to allocate powers and responsibilities between the two agencies. In the few instances where NRC has identified and declined to accept EPA's assertion of authority over certain matters which NRC deems have been reserved to NRC by Congress, the N.M. EID concurs with NRC's interpretation of the statutory allocation of powers between EPA and NRC.

The N.M. EID agrees wholeheartedly with the American Mining Congress that the regulations governing final disposal of uranium mill tailings are of critical importance at this time because most of the domestic uranium industry is shut down. This is especially true in New Mexico where roughly half of this nation's uranium mill tailings are located. Companies are now requesting approval of final reclamation plans, and definitive federal requirements are needed for review and approval of such plans by both Agreement States and the NRC.

Promulgation of final requirements for tailings disposal is also urgently needed to forestall the potential abandonment of tailings sites by

licensees. The 1978 UMTRCA legislation placed responsibility for tailings reclamation and control at "active" sites on the licensee. The intended mechanism to ensure proper disposal and reclamation was (1) the adoption by the EPA and NRC/Agreement States of appropriate standards and regulations for disposal, and (2) the requirement by NRC or the Agreement State of adequate financial sureties. The N.M. EID believes that the intended mechanism may fail due to the delays in promulgation of final, definitive federal requirements and the current state of the uranium industry.

Based on recent cost estimates for tailings reclamation and cleanup of contaminated soil and ground water, it is apparent that present financial sureties for many mills are inadequate. As shown in the attached table, financial sureties in New Mexico may amount to as little as 5% of the actual costs for reclamation and clean up to the EPA standards. (Our sureties for 3 tailings sites are 5%-10% of costs projected to be in the \$3-\$4/ton range.. If we compare the sureties to the costs projected by the Department of Energy after actual experience with reclamation of "inactive" sites under UMTRCA, our sureties are so small as to be insignificant.) Financial sureties in effect for NRC and other Agreement State licensees also appear low, and in some cases may amount to only half the projected cleanup costs based on information recently compiled for Representative Morris Udall by the U. S. General Accounting Office. Financial sureties cannot be increased to amounts adequate to achieve federal standards, until final tailings requirements have been adopted by

NRC or the Agreement State. Because of the requirement for compatibility and the virtual inevitability of litigation by mill licensees, Agreement States can hardly adopt their own conforming regulations until after promulgation of final requirements by the NRC.

The N.M. EID believes that the issue of costs to achieve the EPA standards for tailings disposal should not be considered by the Commission, because the Commission has no legal authority to adopt standards different from those promulgated by the EPA.

The current state of the uranium market in the United States will no doubt affect the ability of some licensees to pay the costs of reclamation and clean-up of their tailings sites. The N.M. EID recognizes that the industry has been placed in an extremely difficult financial position. The requirements for tailings reclamation and clean up are being imposed after the decline of the industry, and are applicable to tailings generated as much as 20-30 years before the federal standards were effective. Some 30% of the tailings at "active" sites nationwide were generated for the Manhattan Engineering District or the Atomic Energy Commission uranium program, without consideration of the costs of tailings reclamation and cleanup. (In New Mexico, as much as 52% of the tailings at one site were generated for the federal government.) The federal government, through its policies on uranium enrichment and imports, also appears partially responsible for the dramatic decline in uranium prices and resultant closure of the domestic uranium mills.

We believe, however, that these financial issues should be separated from the issue of the degree of control necessary for protection of human health and the environment. Bills have been introduced into both the U.S. House of Representatives (H.R. 2236) and the U.S. Senate (S. 1004) to create a federal financing mechanism for "active" tailings reclamation and cleanup. The State of New Mexico strongly supports enactment of this legislation. We hope that the Congress will recognize the federal government's unique responsibility for creation and cleanup of tailings generated in the past, and will enact legislation for financial assistance to address this problem.

In conclusion, we believe that promulgation of definitive federal regulations governing reclamation of "active" uranium mill tailings sites is long overdue. Recent closures of most of the uranium mills in New Mexico and throughout the United States have made it critical that both industry and responsible regulatory agencies know where they stand with respect to reclamation requirements. Financial sureties are also inadequate and must be revised soon after promulgation of the reclamation requirements.

The N.M. EID has previously commented on both the proposed Final Rule published in the November 26, 1984, Federal Register and the ANPR regarding ground water requirements. We have also reviewed the "advanced copy" of the revised Final Rule, which the NRC staff has apparently prepared for the Commission's consideration and adoption. While we might

have wished for slightly different responses to our comments than are reflected in the "advanced copy" of the revised Final Rule, the N.M. EID supports the NRC staff's document as being sound, workable, and within the mandate given NRC by Congress. On behalf of the N.M. EID and the State of New Mexico, I respectfully urge that the Commission adopt the staff's draft document in the form of a Final Rule, to be promulgated without further delay.

COMPARISON OF FINANCIAL SURETIES WITH
ESTIMATED COSTS TO MEET FEDERAL RECLAMATION STANDARDS

<u>COMPANY</u>	<u>SURETY AMOUNT^{A, B}</u>	<u>ESTIMATED COST^C</u>
QUIVIRA	\$8.75 MILLION ^A	\$123.75 MILLION
HOMESTAKE	\$4.25 MILLION ^A	\$ 81.75 MILLION
ANACONDA	\$8.62 MILLION ^A	\$ 88.5 MILLION
UNITED NUCLEAR	\$2.5 MILLION ^A	\$ 13.1 MILLION
SOHIO WESTERN	<u>\$10.95 MILLION^B</u> \$35.1 MILLION	<u>\$ 7.9 MILLION</u> \$315 MILLION

A BASED ON \$25,000/ACRE OF TAILINGS (NM RPR 3-315C).

B BASED ON COSTS IN LICENSE APPLICATION.

C BASED ON \$3.75/TON OF TAILINGS (DOE ESTIMATE FOR NM ACTIVE SITE).