

UNITED NUCLEAR CORPORATION



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RETURN ORIGINAL TO PDR, HQ.

February 11, 1988
UNC-ALO-88-42M

Mr. R. Dale Smith
Director
Uranium Recovery Field Office
U. S. Nuclear Regulatory Commission
P. O. Box 25325
Denver, CO 80225

Subject: Notice of Violation
License No. SUA-1475

Dear Mr. Smith:

This letter is submitted by United Nuclear Corporation (UNC) in response to your letter of January 5, 1988, and the enclosed Notice of Violation and Inspection Report No. 40-8907/87-001. The Notice of Violation identifies the following alleged violations: failure to develop written procedures to control blowing tailings, as required by License Condition No. 16 of License No. SUA-1475; failure to perform documented weekly inspection of the tailings area, as required by License Condition No. 16; and failure to establish procedures utilizing proper radiation protection principles for conducting alpha contamination surveys and calculating internal exposures for employees, as required by License Condition No. 20. UNC disagrees with the NRC's findings with regarding to each of the alleged violations, as set forth in greater detail below.

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General Comments

As a general matter, UNC believes that NRC's findings are not license condition violations. Rather, they appear at most to be the result of a lack of communication between the NRC and UNC regarding the Agency's interpretation of the license conditions at issue, and its evaluation of the form and adequacy of prior UNC submissions prepared in response to program element deficiencies previously identified by the NRC.

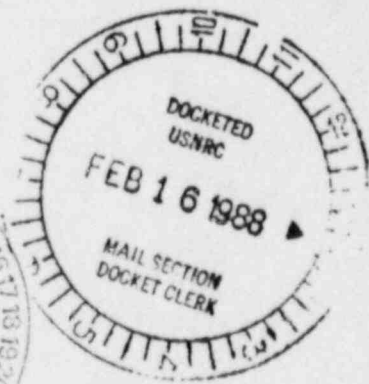
In August 1986, shortly after reasserting jurisdiction over the New Mexico licensing program, the NRC inspected UNC's Church Rock facility to determine the adequacy of UNC's program, which at

DESIGNATED ORIGINAL

FEE NOT REQUIRED

Certified By Mary C. Hood

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that time was designed to address the requirements of the State of New Mexico's Agreement State program. No violations were identified during the inspection. However, the NRC did identify a list of six program elements where UNC's radiation safety program was not consistent with NRC guidance. UNC was directed to address each of these elements (which included written procedures for control and remediation of blowing tailings) "by modifying the existing radiation safety program and submitting it [to the NRC] for incorporation into the license". Appendix A, List of Necessary Program Elements at 1, accompanying Inspection Report No. 40-8907/87-001 (December 12, 1986). As requested, UNC responded to each identified deficiency, including proposed safety program modifications, by letters of February 13 and March 16, 1987.

UNC's responses to NRC's list of program deficiencies were intended by UNC to address fully all of the issues raised by the NRC. Until we received your January 5, 1988 letter, we believed that these submissions (and in particular the procedures for control of blowing tailings) had satisfied NRC's concerns, as we had received no previous indications the responses were insufficient or required clarification or revision. The only written communication we have received regarding the submission was a letter from Mr. Pettengill of your staff dated April 13, 1987, acknowledging receipt of UNC's March 16, 1987, submittal and stating that upon review the NRC would incorporate the approved program into UNC's license. We believed this applied to the February submittal as well.

In addition to the February and March submittals, UNC submitted the required tailings reclamation plan in June of 1987, which supplemented UNC's previous responses with respect to several program elements, including windblown tailings control. UNC and NRC discussed their inclusion in the plan during NRC's August 1986 inspection.

UNC has responded to every previous request made of it by the NRC with respect to the program elements identified in your January 5, 1988 letter, consistent with our desire to work with the NRC. To date, however, we have received very little feedback, and no indication that our previous responses were regarded as inadequate by the NRC. UNC sincerely desires to manage its Church Rock activities in compliance with NRC regulations. Had the concerns identified in your January 5, 1988 letter, been raised in a timely response to UNC's prior submittals, they could easily have been resolved long before the December 1987 inspection. UNC remains committed to resolving the NRC's concerns in a timely manner, and we have instituted a number of procedures to do so, which are described herein. Characterization of these concerns as violations of license

conditions is, however, inappropriate on the facts, and is counterproductive to maintaining a mutually cooperative and beneficial relationship between the Agency and its licensees.

Responses to Alleged Violations

UNC's specific responses to the violations alleged are set forth below.

Alleged Violation A.1. Licensee has not developed written procedures for the control of blowing tailings as required in license condition No. 16 of Licenses No. SUA-1475.

UNC disagrees with NRC's finding in this matter. License Condition No. 16 and Criterion 8 of 10 C.F.R. Part 40, Appendix A, require that UNC maintain "written operating procedures" specifying the methods that will be used to control windblown tailings.

Following the August 1986 inspection, the NRC concluded that:

[UNC's] program for control of blowing [tailings] is generally acceptable. In addition, UNC has committed to submit a reclamation plan to NRC . . . The reclamation plan will include a more comprehensive program for interim stabilization of the tailings to minimize blowing during the period preceding the placement of the reclamation cover.

Inspection Report No. 40-8907/86-001, Section 6.3 at 12. NRC identified the lack of "written procedures for the control of blowing tailings" as a program element deficiency and directed UNC to remedy the deficiency by proposing a modification of its safety program so that it could be incorporated into UNC's license.

UNC submitted its proposed written operating procedures for tailings management, including the control of blowing tailings, on February 13, 1987. UNC's response included a description of the measures implemented in the past, what it was presently doing to control windblown tailings and additional proposed control measures.

On April 10, 1987, UNC received its upgraded license, containing License Condition No. 16, without further mention made by the NRC of the windblown tailings issue.

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On June 1, 1987, UNC submitted its Reclamation Plan. As contemplated by the December 12, 1986 Inspection Report, the Reclamation Plan augmented UNC's windblown tailings control program by including a proposed spray system designed to assist in minimizing blowing of tailings prior to placement of the reclamation cover, in addition to providing additional evaporative capacity. This proposal supplemented UNC's previously submitted written operating procedures.

By letter dated September 8, 1987, the NRC authorized UNC to install and operate the spray system proposed in the Reclamation Plan. NRC's authorization was very specific in providing detailed construction and operating instructions, including the number of lines to be constructed, the number and spacing of spray nozzles, limitations on periods of operation, and volume of water to be sprayed. Based upon this letter, receipt of the license in April, and the lack of any other response, UNC believed its written operating procedures were regarded as satisfactory by the NRC. Accordingly, UNC was surprised and disturbed to receive a Notice of Violation in this regard, particularly as no specific format for such procedures is required under UNC's license or Appendix A. For the sake of efficiency, UNC chose to maintain its written procedures in the form proposed to NRC, supplemented by NRC's written approval, until such time as NRC provided additional comment or guidance regarding the adequacy of the proposed measures. Based on your January 5, 1988 letter, it is evident that the NRC regards the format of these procedures, although not their content, as insufficient. Had the NRC provided timely comments or guidance on our written procedures, they could have been modified to conform more closely with NRC's concept of what constitutes an adequate written procedure.

UNC believes it is not in violation of License Condition No. 16 because UNC in fact has developed and provided the necessary written operating procedures to the NRC. In light of UNC's submission of these procedures to the NRC, and the NRC's September authorization, it is simply incorrect to state that a violation exists because of the lack of such procedures. While UNC believes that no corrective actions are required, UNC nonetheless desires to have its procedures in a format conforming to NRC's preferences. Accordingly, UNC's Radiation Safety Officer has been directed to review the procedure prepared by other licensees and to develop a new written procedure format. He will be in contact with Mr. Garcia of your staff to discuss an appropriate format within 30 days.

Alleged Violation A.2. Licensee has not performed documented weekly inspections of the tailings area as required in license condition No. 16.

UNC disagrees with NRC's finding in this matter. Condition No. 16 states with regard to inspections that "the effectiveness of the control method used (for control of blowing tailings) shall be evaluated weekly by means of a documented tailings area inspection, and corrective actions taken and documented in response to inspection findings."

Section 6.2.1 of the December 12, 1986 Inspection Report acknowledges the existence of both a weekly dam inspection program at the site, and the use by UNC of a checklist form with space provided for comments to record the results of such inspections. During the August 1986 inspection, UNC personnel explained to NRC's inspection personnel that the weekly inspection program addressed both dam stability and blowing tailings. NRC indicated that our program was adequate. Section 6.3 of the Inspection Report, "Program for Controlling Blowing of Tailings", makes no mention of a deficiency in the inspection program other than the lack of written operating procedures, as discussed previously. Accordingly, UNC regarded the Inspection Report's findings as clear guidance from the NRC that its program complied with NRC requirements. However, as a part of its February 13, 1987, response to program element deficiencies, UNC proposed a monthly inspection by the Radiation Safety Officer in addition to the weekly inspections already in place.

In April, 1987, UNC received the upgrade to its license containing Condition No. 16. UNC continued its weekly inspections in accordance with license condition, and supplemented them with monthly inspections even though the license did not require the additional inspections.

UNC produced the tailings area inspection documents for review during the December 1987, inspection. Apparently the inspection personnel were not satisfied that these documents contained information regarding control of blowing tailings. However, the absence of commentary on the weekly inspection forms does not indicate inadequate inspection or inadequate windblown tailings control. The absence of commentary on the weekly forms is not the result of inadequate inspection; rather it reflects the fact that windblown tailings were not determined to be a problem during the time of the inspections, and that UNC's controls were evaluated as adequate. Minor corrective action was determined to be necessary on occasion and was documented on the monthly reports. This procedure satisfies the requirement in Condition No. 16 that corrective action be taken and documented in response

to inspection findings and is consistent with the procedures previously explained to the NRC.

While UNC believes that no violation has in fact occurred, we understand that the NRC would prefer that a clearer method of documentation be employed. UNC, therefore, has developed a weekly inspection form containing a specific checklist for inspection of windblown tailings control programs. A copy of this form is enclosed for your information. The inspector will be required to make specific notations on this form relative to the condition of these programs on a weekly basis and will be instructed to document any corrective actions recommended and taken thereon. We hope to avoid confusion in future NRC inspections by implementing these changes immediately.

Alleged Violation B. Licensee has not established procedures which utilize proper radiation protection principles for conducting alpha contamination surveys and calculating internal exposures for employees as required in condition No. 20.

UNC disagrees with NRC's findings on this matter. Condition No. 20 requires the licensee to establish written procedures for activities associated with the in-plant radiation safety and environmental monitoring programs, and requires that all written procedures be reviewed and approved in writing by the Radiation Safety Officer before implementation and whenever a change in procedure is proposed to ensure that proper radiation protection principles are being applied.

The January 5, 1988 Inspection Report alleges that proper radiation protection principles were not applied in two instances; one resulting from failure to properly account for the area of the measuring probe in calculating exposures, the other resulting from the utilization of a procedure for calculating internal exposure which the NRC considers to be inaccurate.

UNC does not believe that either of these instances is a violation of Condition No. 20. Neither of these occurrences affect the application of proper radiation protection principles. UNC's Radiation Safety Officer has purposely set his action limits well below allowable limits as a conservative safety measure so that occurrences such as these do not result in unacceptable releases or exposures. He has therefore applied the overriding radiation protection principle that releases of radioactive materials and radioactive exposures be kept as low as reasonably achievable by the use of this conservative approach. In addition, he has correctly recognized that internal exposures would be very low because of the lack of activity at the site and the overall cleanliness of the facility. As the January 5, 1988 Inspection Report notes, although the inspectors did not regard

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the procedure utilized for calculating internal exposure as accurate, "due to the extremely low concentrations and very limited occupancy times . . . employee exposures have been less than one percent of the maximum permissible exposure." Inspection Report No. 40-8907/87-001, Section 6.b. at 6 (January 5, 1988). Calculation of employee exposures at these concentrations, whether UNC's method or NRC's preferred method is used, gives the same result. In either case the end result is an exposure of 0.0007% of maximum permissible exposure or maximum permissible concentration. Proper radiation protection principles have been applied continuously and successfully as evidenced by the fact that radiation exposures are being kept as low as reasonably achievable.

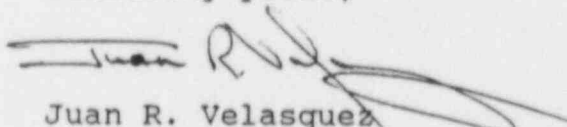
While UNC believes that no violation of Condition No. 20 has occurred, we recognize NRC's desire that more care be taken in following NRC's preferred procedures. The Radiation Safety Officer has therefore been instructed to conduct all future calculations in accordance with those procedures.

Conclusion

UNC requests that the alleged violations be withdrawn and rephrased as comments to UNC's program element responses of February 13 and March 16, 1987, as a more accurate representation of the appropriate level of regulatory concern. UNC has already taken steps that should address the concerns underlying the Notice of Violation. The use of violation notices should be limited to those instances where there are clear misdeeds contrary to license conditions or law, and then only after both the Agency and the licensee have a clear understanding of what is expected. This can only occur through open and timely communications.

If you have any comments or questions regarding the issues addressed in this letter, or if we can be of further assistance, please do not hesitate to call on us. We look forward to your response.

Sincerely yours,


Juan R. Velasquez
Manager, Environmental Affairs

JRV:nlk

cc: Harry Pettengill

WEEKLY INSPECTION FOR BLOWING TAILINGS

DATE: _____

SIGNATURE OF RSO

TAILINGS AREA

CONDITION AND SOURCE AREA IF BLOWING

1. NORTH POND

2. CENTRAL POND

3. SOUTH POND

GENERAL CONTROL SYSTEMS

CONDITION

1. Sprays

2. Wind Barriers

CORRECTIVE ACTION(S) TAKEN PRIOR WEEK: _____

EFFECTIVENESS OF PRIOR CORRECTIVE ACTIONS: _____

