

October 10, 2001

Warren E. Jacobi, Manager
Radiation Services Program
Laboratory and Radiation Services Division
Colorado Department of Public Health & Environment
8100 Lowry Blvd.
Denver, CO 80230-6928

Dear Mr. Jacobi:

In your letter of August 31, 2001, you requested clarification of our comment that Colorado must change the wording in Part 18 from "radioactive material" to "byproduct material type 2."

The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), Title II, established the legal frame work for the generation and disposal of 11e.(2) byproduct material (and added the definition of this material at Section 11e.(2) of the Atomic Energy Act (AEA)). Title II also amended Section 274 of the AEA by adding Section 274o which specifies the requirements for States that wish to take on regulatory authority over 11e.(2) byproduct material. Title II specifies that the Department of Energy (DOE) must take title to the 11e.(2) disposal site for long-term care, if the State chooses not to take title, after all applicable standards have been met and the State license terminated. DOE's authority applies to 11e.(2) byproduct material only and does not apply to other similar materials that do not meet the AEA definition of 11e.(2) byproduct material. (DOE has other general authority under which it may take title to other materials.) The UMTRCA/AEA definition for 11e.(2) byproduct material is based on the process by which material is generated, not its radiological or chemical properties.

This constraint on DOE's authority to take title to these disposal sites when disposal includes other non-11e.(2) byproduct material is technically sound. To address this, the Nuclear Regulatory Commission, in conjunction with DOE, has developed guidance that, if followed, facilitates the disposal of such material in an 11e.(2) disposal facility which includes prior approval of DOE, the long-term custodian. [See Regulatory Issue Summary 2000-23 dated November 30, 2000 (RIS-00-23)]

In summary, the AEA, as amended by UMTRCA, requires that 1 1e.(2) byproduct material be managed and disposed of in a unique manner with DOE as the ultimate long-term custodian (except when the State chooses to take on this role). The mixture of other material in the disposal site without prior approval of DOE would jeopardize the title transfer of the disposal site and ultimate long-term care. The use of the words "radioactive material" instead of "byproduct material type 2" would allow the disposal of non-11e.(2) material in the disposal cell without prior DOE approval and would jeopardize the ultimate site transfer to DOE. Based on this concern, the Part 18 wording must be changed.

If you have any questions, please contact me at 301-415-2326 or Dennis Sollenberger at 301-415-2819.

Sincerely,

IRA By Richard L. Blanton Acting for!
Frederick C. Combs, Deputy Director
Office of State and Tribal Programs