

December 20, 1994

MEMORANDUM TO: The Chairman
FROM: John C. Hoyle, Acting Secretary /s/
SUBJECT: COMIS-94-014 - SUBPART I

The Commission approves, by a 2 to 1 vote, sending the attached letter to Administrator Browner. Commissioner Rogers concurred in your proposal to send a letter to Administrator Browner while Commissioner de Planque disapproved.

In addition, the attached staff requirements memorandum provides staff direction on this item. This completes action on COMIS-94-014.

Attachments:
As stated

cc: Commissioner Rogers
Commissioner de Planque
EDO
OGC

December 20, 1994

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: John C. Hoyle, Acting Secretary /s/

SUBJECT: COMIS-94-014 - SUBPART I

The Commission (with the Chairman and Commissioner Rogers agreeing) has agreed to send the attached letter to Administrator Browner. Commissioner de Planque disagreed with the letter. The staff should proceed to develop a constraint rule and submit it to the Commission for review and approval. The Statement of Considerations should explicitly describe whether, and on what basis, the Commission intends to require Agreement States to adopt the rule as a matter of compatibility and/or adequacy.

(EDO)

(SECY Suspense: 5/1/95)

Attachment:
As stated

cc: The Chairman
Commissioner Rogers
Commissioner de Planque
OGC
OCA
OIG

PART 20 AIR EMISSIONS CONSTRAINT RULE

SUBPART B--RADIATION PROTECTION PROGRAMS

§ 20.1101 Radiation protection programs.

(a) Each licensee shall develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of this part. (See § 20.2102 for recordkeeping requirements relating to these programs.)

(b) The licensee shall use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(c) To implement the ALARA requirements of § 20.1101(b), and notwithstanding § 20.1301 of this Part, the licensee shall constrain air emissions of radioactive materials so that the individual member of the public likely to receive the highest dose will not be expected to receive a dose in excess of 10 millirem TEDE per year from such emissions.

(~~e~~)(d) The licensee shall periodically (at least annually) review the radiation protection program content and implementation.

SUBPART M--REPORTS

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.

(a) Reportable events. In addition to the notification required by § 20.2202, each licensee shall submit a written report within 30 days after learning of any of the following occurrences:

- (1) Any incident for which notification is required by § 20.2202; or
- (2) Doses in excess of any of the following:
 - (i) The occupational dose limits for adults in § 20.1201; or
 - (ii) The occupational dose limits for a minor in § 20.1207; or
 - (iii) The limits for an embryo/fetus of a declared pregnant woman in § 20.1208; or
 - (iv) The limits for an individual member of the public in § 20.1301; or
 - (v) The ALARA constraint for air emissions established under § 20.1101(c); or
 - (~~v~~)(vi) Any applicable limit in the license; or
- (3) Levels of radiation or concentrations of radioactive material in--
 - (i) A restricted area in excess of any applicable limit in the license; or

(ii) An unrestricted area in excess of 10 times any applicable limit set forth in this part or in the license (whether or not involving exposure of any individual in excess of the limits in § 20.1301); or

(4) For licensees subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR Part 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(b) Contents of reports.

(1) Each report required by paragraph (a) of this section must describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved;

and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, **ALARA constraints**, and associated license conditions.

(2) Each report filed pursuant to paragraph (a) of this section must include for each individual¹ exposed: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report.

(c) For holders of an operating license for a nuclear power plant, the occurrences included in paragraph (a) of this section must be reported in accordance with the procedures described in § 50.73(b), (c), (d), (e), and (g) of this chapter and must also include the information required by paragraph (b) of this section. Occurrences reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraph (a) of this section.

(d) All licensees, other than those holding an operating license for a nuclear power plant, who make reports under paragraph (a) of this section shall submit the report in writing to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D to §§ 20.1001 - 20.2401.

¹ With respect to the limit for the embryo/fetus (§ 20.1208), the identifiers should be those of the declared pregnant woman.

Separate views of Commissioner de Planque

Since the NRC does not support a health and safety basis for requiring a de facto dose limit of 10 mrem, Commissioner de Planque does not approve publication of the proposed constraint rule and finds it incompatible with both Executive and Congressional interest in eliminating or reducing regulations not required for health and safety. Also, since the NRC does not regard the 10 mrem standard as a dose limit, she views requiring Agreement State adoption untenable according to the NRC's current and proposed Agreement State policy (see 59 Fed. Reg. 37269, 37273 (1994)).

The Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

Dear Ms. Browner:

After further serious consideration of EPA's expressed concerns regarding the proposed rescission of 40 CFR Part 61, Subpart I, for NRC licensees other than power reactor licensees, the Commission is now proposing to adopt a rule containing a constraint level for air emissions of radionuclides of 10 mrem/yr, similar to the program developed pursuant to 10 CFR Part 50 Appendix I for power reactors, a program which is enforceable. Enclosure 2 provides a draft of the language for the constraint rule that the Commission is currently considering (which is the language previously presented by NRC staff to EPA staff in October 1993). Concurrent with the NRC's notice of proposed rulemaking, we would propose that EPA would publish in the Federal Register, as part of its ongoing rulemaking for NRC licensees other than nuclear power reactors, a proposal to rescind premised on NRC adoption of a constraint rule similar to the proposed rule. Each agency would coordinate its rulemaking activities with the other.

As discussed in my July 22, 1994 letter, we are developing new Agreement State review procedures to ensure the adequacy and compatibility of State programs. These procedures will provide a consistent approach for evaluating the adequacy and compatibility of Agreement State programs and for revoking or suspending these programs if necessary. Once the constraint rule goes into effect, we expect Agreement States to adopt the rule.

As described my July 22, 1994 letter, until completion of the rulemakings proposed above, we will collect inspection information relevant to air emissions of radionuclides. We will share this information with EPA on a routine basis.

Finally, based on EPA's previous proposed rule to rescind Subpart I as it applies to nuclear power plants and the constraint rulemaking proposed above for NRC licensees other than power reactors, we are assuming that you will agree that there is no reason to delay rescission of Subpart I for nuclear power reactor licensees.

The Honorable Carol Browner -2-

The Commission hopes to proceed promptly, and with EPA's cooperation to work to eliminate unnecessary dual regulation between the EPA and the NRC regulatory programs.

Commissioner de Planque did not agree with this letter and her separate views are attached.

Sincerely,

Ivan Selin

Enclosures:

1. Separate views of Commissioner de Planque
2. Draft Constraint Rule