

S89-233  
478

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

December 28, 1989

MEMORANDUM FOR: James M. Taylor, Executive Director  
for Operations

FROM: Samuel J. Chalk, Secretary

SUBJECT: SEC-89-233 - PROPOSED AMENDMENTS TO 10 CFR  
PART 40 FOR GENERAL LICENSES FOR THE CUSTODY  
AND LONG-TERM CARE OF URANIUM MILL TAILINGS  
SITES

This is to advise you that the Commission (with Chairman Carr and Commissioners Roberts, Rogers, and Curtiss agreeing) has approved the proposed amendments to 10 CFR Part 40 subject to:

1. As referenced in Criterion 10 of Appendix A to CFR

Part 40, staff should request Title II licensees to conduct an evaluation of the long-term monitoring and surveillance needs as part of the reclamation plans required by Criterion 9 of Appendix A. The evaluation should present the licensee's objective estimate of what surveillance and monitoring measures are appropriate after site closure. The purpose of NRC's request for the surveillance evaluation in the reclamation plan is to assess the adequacy of the charge for long-term surveillance under Criterion 10. Inclusion of such evaluations in the reclamation plans

also integrates the reclamation activities with the

long-term monitoring and surveillance program.

Preparation and review of these evaluations should not require a significantly greater effort on the part

of

licensees or NRC than the effort already expended in reviewing reclamation plans. In addition, the reclamation plans can provide the basis for the custodial agency to prepare the Long Term Surveillance Plan (LTSP) at Title II sites. Through this mechanism,

the NRC promotes transfer of site information from existing licensees to the custodial agency, integrates reclamation activities with long-term surveillance, reduces the expense to Federal and State governments, and ensures the adequacy of the long-term surveillance charges paid by licensees.

-2-  
479

2. As reflected in the enclosed mark-up, the Commission endorses the staff's approach to ensure that no actual or perceived regulatory gap will occur between the termination of a specific license at a Title II site and the inclusion of that site under the general license for long-term custody. Staff should work with licensees and the custodial agency to ensure continuation of site control and surveillance during the transition period.

3. To ensure the most effective use of limited NRC resources in this program area, staff should perform acceptance reviews of LTSPs and similar documents and reject those that are not of suitable quality for NRC review. The chief program officer for the applicant should certify that LTSP's and related documents clearly demonstrate compliance with applicable standards and that they are current, factually correct, and complete prior to submission to NRC.

4. Staff should promote cooperation with State and local governments and the general public to provide opportunities for public participation. Such participation is especially important early in the remedial action program for Title I sites and in closure activities for Title II sites. If the local public demonstrates sincere interest in the long-term surveillance of the sites, staff should consider the need to hold public meetings near the disposal sites to solicit public comments on LTSPs and explain NRC's regulatory role under the general license program. This opportunity for public participation, however, should not supplant DOE's public participation program for the Title I sites.

5. As a separate but related action to the proposed amendments, staff should expedite its response to the petition filed by the Sierra Club (PRM-40-23) in December 1980. The Commission is concerned that NRC has not yet acted on the petition even though the

petition has been under evaluation for almost nine years. The Commission does not consider it acceptable to render the petition meaningless simply by delaying action until after DOE completes the remedial action program. The Statement of Consideration for the proposed amendments should be revised to indicate the Commission's intent to respond to the Petition by the time that the proposed amendments to Part 40 are finalized, which should occur within approximately six months of the publication date of the proposed amendments.

-3-  
480

6. Section X (pg. 20) of the draft FRN pertaining to EPA's Clean Air Act activities should be modified to reflect the impact of EPA's final standards and NRC's position thereon.

7. These comments and other technical and editorial changes are reflected in the attached mark-up of the proposed Federal Register notice.

The FRN should be revised as noted, reviewed by the regulatory Publications Branch for consistency with the requirements of the Federal Register, and returned for signature and publication.  
(EDO) (SECY SUSPENSE: 1/12/89)

Commissioner Remick abstained on this paper.

Attachment:  
AS stated

cc: Chairman Carr  
Commissioner Rogers  
Commissioner Roberts  
Commissioner Curtiss  
Commissioner Remick  
OGC  
GPA  
ACRS  
PDR - Advance  
DCS - P1-24