



Erin M. Crotty
Commissioner

New York State Department of Environmental Conservation

Division of Solid and Hazardous Materials
Bureau of Radiation

625 Broadway, Albany, New York 12233-7255

Phone: (518) 402-8579 FAX: (518) 402-9025

Website: www.dec.state.ny.us

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PROPOSED RULE ~~PR 40~~
(67FR 55175)

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Attn: Rulemaking & Adjudications Staffs
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Secretary:

Re: Proposed rule, 10 CFR Part 40

The New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, Bureau of Radiation has reviewed the Nuclear Regulatory Commission (NRC) proposed rule amending 10 CFR Part 40 on transfers of certain source materials by specific licensees (FR 55175-55179). The following are our comments:

1. The rulemaking fails to address if source materials < 0.05 w/o Ur or Th, will be required to be manifested as radioactive wastes, if these materials are in transport to a disposal site. At what level will manifesting cease?
2. Most sites contaminated with Ur are remediated to < 100 pCi/g - well below the 339 pCi/g Ur level for source material. (Th levels are usually below 30 pCi/g.) If the NRC's finding of no significant impact (FONSI) for this rulemaking is truly no significant impact under the National Environmental Policy Act (NEPA), this rulemaking could be setting future cleanup levels for Ur and Th at 339 pCi/g or 116 pCi/g, respectively. Such a cleanup level would not be considered protective of public health and safety.
3. The rulemaking should establish threshold levels for Ur and Th contaminated soils at which the rulemaking will not apply.
4. The proposed rulemaking will allow doses to the general public up to 100 mrem/yr without Commission approval. Is this dose a total effective dose equivalent (TEDE)? How will ALARA be considered by NRC staff in its approvals between 25 and 100 pCi/g? Likewise how will the Commission consider ALARA in its approvals above 100 mrem/yr?

Template = SECY-067

SECY-02

Rulemaking & Adjudications Staff Page 2

5. The proposed rulemaking, which could result in radioactive waste doses to the public of over 100 mrem/yr, is accompanied with a FONSI. Yet, NRC's 10 CFR Part 61 regulations for low level radioactive waste disposal were accompanied by an environmental impact statement. While Part 61 doses have not been modified to reflect TEDE methodology, Part 61 performance objectives regulate doses to the public at 25 mrem/yr. Why does a proposed regulation limiting public doses to one-fourth that of another regulation, warrant the preparation of an EIS and not the other?
6. The rulemaking documentation should discuss how it complies with the definitions of byproduct and unimportant quantities of source materials in the 4/27/90 decision of the U.S. Court of Appeals in Kerr-McGee Chemical Corporation vs. NRC.
7. FR55175 states that "the object of this proposed action is to ensure that the regulations regarding transfers of materials containing low concentrations of source material are adequate to protect public health and safety." Since the proposed regulations allow doses to the public greater than 100 mrem/yr with Commission approval, how is this protective of public health when it is beyond the CERCLA risk range? Is it consistent with the National Contingency Plan (NCP)?
8. The proposed rulemaking refers to "dose arising from an occupational exposure." Is a RCRA-C disposal facility worker handling materials subject to this rulemaking considered a member of the general public or a radiation worker?
9. Please provide a copy of the FONSI that FR55177 states was sent to the State Liaison Officer. Apparently, New York did not receive its copy. Also, was this notice and FONSI sent to the A-95 Clearinghouse? In the absence of these actions, it is requested in advance that the public comment period for this proposed rulemaking be extended till the FONSI becomes readily available to the public.

Sincerely yours,

Paul J. Merges

Paul J. Merges, Ph.D.
Director, Bureau of Radiation

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