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Joan Claybrook, President

DOCKETED
USNRC

DOCKET NUMBER
PROPOSED RULE PR 40
(67FR 55175)

November 12, 2002

November 14, 2002 (11:30AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Comments on Proposed Rule Amending 10 CFR 40, Transfers of Certain Source Materials by Specific Licensees

Dear Secretary:

In response to the comment period noticed in the Federal Register on August 28, 2002, Public Citizen urges the Nuclear Regulatory Commission to prohibit the unregulated release of low-concentrations of source material rather than finalizing amendments to 10 CFR 40 proposed in this rulemaking. While we support the NRC's stated objective to "ensure that the regulations regarding transfers of materials containing low concentrations of source material are adequate to protect public health and safety," the proposed rulemaking falls short and in fact could increase public health risks by codifying regulatory exemptions for the disposal of certain "low-level" radioactive wastes.

We strenuously object to the proposed revision to Section 40.13(a), which adds disposal of "unimportant quantities" of source material to the list of activities exempt from regulation. This seemingly significant change is dismissed as clarifying language and as such is not discussed in the regulatory analysis or the environmental impact assessment for this proposed rulemaking. The troubling implication is that under this section the NRC currently allows the unregulated disposal of waste that contains less than 0.05 percent source material. Rather than revising the regulations to be consistent with current practice in this case, the NRC should reject this expansive interpretation of existing regulations and not allow materials containing uranium or thorium to be released to exempt, unlicensed persons for the purpose of disposal. At the very least, the agency should thoroughly evaluate the environmental impacts of this proposal in an environmental impact statement. To allow the unregulated dumping of source material, even at low concentrations, raises serious health and safety concerns. It appears that in some cases the resulting radiation dose from these materials may even substantially exceed the Environmental Protection Agency's allowable risk range for clean-up under CERCLA's National Contingency Plan, in effect establishing additional Superfund sites in need of decontamination.

The other aspect of this rulemaking – to require NRC approval for transfers of source material under Section 40.13(a) – does not go far enough to protect public health and safety. As

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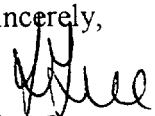
the regulatory analysis for this rulemaking notes in the introduction, "Once the material is transferred out of the licensee's control, NRC can no longer place restrictions on the use of the material to reduce potential doses..." If the NRC approves exemptions under Section 40.13(a), the agency will not be able to track the accumulation or use of these materials, regulate resulting exposures, or notify the public of risks. It is widely accepted that radiation, even at low levels, can pose negative health effects. Therefore, to best protect public health and safety, radioactive byproducts and wastes resulting from NRC-licensed processes must be contained and isolated from the biosphere. Under no circumstances should the NRC allow its licensees, who benefit financially from the processes that result in these materials, to evade responsibility for properly managing their wastes. Instead of the inadequate oversight proposed in this rulemaking, the NRC should altogether repeal the Section 40.13(a) exemption for waste from licensed source material processing operations.

In the Finding of No Significant Environmental Impact (FONSI) for this rulemaking, the NRC acknowledges the benefits of not approving transfers to exempted persons: "[Managing these materials] in a regulated manner [...] would provide significantly greater protection to the public and the environment from exposure to radiation. Workers at licensed facilities would be expected to be exposed to lower doses of radiation than the levels to which workers at unregulated exempt facilities would be exposed, because of the routine safety precautions required at licensed facilities." No justification is given for maintaining the Section 40.13(a) loophole.

Finally, we are also concerned about the misleading and inaccurate language included in the FONSI section of the Federal Register notice regarding the environmental assessment (EA). The section states, "...the Commission has concluded on the basis of an environmental assessment that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment." The text that follows appears to detail the Commission's conclusion, based on the EA that is supposedly available for public. In fact, however, this summary is itself the EA and no separate document is available either for public comment or as a basis for the Commission's conclusions (according to Gary Comfort in the Office of Nuclear Material Safety and Safeguards). It is disturbing, to say the least, first, that the Federal Register notice included these errors, and then that the NRC failed to publish a correction when the error was discovered. This situation begs the question, how many other erroneous, misleading, or inaccurate statements are contained within this notice of proposed rulemaking?

Thank you for your attention to these matters.

Sincerely,



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