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PROPOSED RULE # 40
(67FR 55175)



November 25, 2002

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USNRC

Secretary
Attn: Rulemaking and Adjudication Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001

December 3, 2002 (2:43PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Sir/Madam:

This letter sets forth the National Mining Association's (NMA) comments on the Nuclear Regulatory Commission's (NRC or the Commission) proposed rule on transfers of certain source materials by specific licensees. 67 Fed. Reg. 55175 (August 28, 2002). NMA's members are producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to mining. NMA submits these comments on behalf of its member companies who are NRC licensees potentially impacted by the proposed rule.

As a general matter, the proposed rule would require NRC to approve requests from its specific licensees to transfer "unimportant quantities" (less than 0.05% by weight uranium and thorium) of *source material* to an entity that would otherwise be exempt from NRC regulation under 10 CFR part 40.13(a) (Section 40.13(a)). Section 40.13(a) was implemented pursuant to NRC's authority under Section 62 of the Atomic Energy Act of 1954 (AEA), as amended. NMA believes that many aspects of the proposed rule are inconsistent with current NRC policies and precedent and do not adequately address many of the issues identified in the course of NRC's inquiry into this matter which began in 1992.

Further, NMA does not support promulgation of the proposed rule for several reasons. First and foremost, NRC has not demonstrated that the proposed rule is necessary to protect public health from potentially significant risks of harm given that licensees currently must comply with 10 CFR part 20 dose limitations and the release criteria in Regulatory Guide 1.86. Both 10 CFR part 20 and Regulatory Guide 1.86 apply to release or transfer of materials involved in, or affected or potentially affected by licensed activities (i.e., contaminated or potentially contaminated). Presumably this would (or should) hold true for transfers of unimportant quantities of *source material*. NRC can simply state on the record or merely amend 10 CFR part 40.51 to say that all transfers must satisfy 10 CFR part 20. Such an approach should provide more than adequate protection of public health and safety without (1) potentially causing a variety of unintended consequences involving regulatory precedent that goes back 50

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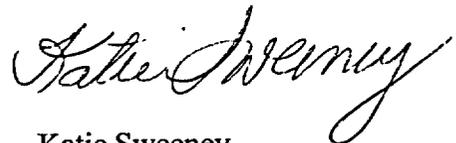
plus years and (2) raising serious legal questions given the provisions of section 62 of the Atomic Energy Act (AEA), as amended.¹

NMA does not believe that the series of NRC documents addressing this issue since 1992 provide any clear cut evidence of an ongoing or potential future significant risk to public health from transfers of unimportant quantities of *source material*. Indeed, the documentary record seems to contain a variety of general conclusory statements, muddled concerns (i.e., zircon workers exposed to more than 100 mrem/y when they are subject to the occupational dose limit of 5,000 mrem/y) and hypothetical exposure scenarios that do not hold up to even cursory scrutiny.

Secondly, in light of the existing regulatory protection and lack of a demonstrated risk to public health from exempted *source material*, the costs of a formal NRC approval processed simply cannot be justified. It makes no sense to mandate the expenditures of licensee time and dollars, including NRC fees, on the basis of the evidentiary record in this matter. It runs directly counter to *risk informed* regulatory decision making and performance based license provisions. If a licensee makes an inappropriate decision to release or transfer exempt *source material* under circumstances that would lead to a violation of Part 20 enforcement will always be an option for NRC. If a licensee has some concerns about such a release or transfer, it can decide to request NRC review, which is appropriate, since licensee's have the primary responsibility for safe management of AEA nuclear materials.

Thank you for the opportunity to submit these comments. If you have any questions, please contact me at 202/463-2627.

Sincerely,



Katie Sweeney
Associate General Counsel

¹ NMA intends to discuss some of these potential problems in some detail in a supplement to this filing, which, due to its complexity, requires further review by NMA's licensee member companies.