

January 8, 2003

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Diaz

FROM: William D. Travers */RA/*
Executive Director for Operations

SUBJECT: RULEMAKING PLAN AND PROPOSED SCHEDULE FOR
RULEMAKING EFFORT ON CONTROL OF SOLID MATERIALS

In a Staff Requirements Memorandum (SRM), dated October 25, 2002, the Commission directed the staff to proceed with an enhanced participatory rulemaking on control of solid materials, subject to the Commission comments provided. The SRM indicated that the staff should develop a rulemaking plan and submit, for Commission approval, a proposed schedule for the rulemaking effort within 90 days of the SRM; the SRM noted that the schedule should reflect the Commission's desire to complete the rulemaking within 3 years.

In response to the SRM, the staff has developed a proposed schedule for completion of a proposed and final rule on control of solid materials within the time period noted in the SRM. Because SECY-02-0133 already assesses several options that the Commission reviewed in directing the staff to prepare a proposed rule, we are submitting the schedule as part of a "modified" rulemaking plan to aid in guiding the rulemaking process per the approach suggested in Section 3.1(e)(1) of the NRC Regulations Handbook (NUREG/BR-0053, Rev 5).

The staff is providing this "modified" rulemaking plan to the States at the same time that it is providing it to the Commission. The staff has benefitted by obtaining State views through State involvement at the Fall 1999 workshops, as one of the invited stakeholders at the May 2000 Commission meeting, and on the Working and Steering Groups. In addition, the staff will seek further State comment during this process.

If the Commission approves the schedule contained in the attachment, the staff will continue with efforts that it already has underway to develop necessary information for issuing a proposed rule. Some of the items in the attached schedule need to come about in a timely and satisfactory way for this schedule to be met; the staff will inform the Commission if there are problems with any of these items.

SECY, please track.

Attachment: Modified Rulemaking Plan

cc: SECY
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cc: SECY OGC OCA OPA CFO

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Modified Rulemaking Plan for Rulemaking on Control of Solid Materials

1. Introduction

On July 15, 2002, the staff provided the Commission with a paper, SECY-02-0133, which assessed several rulemaking options including:

- 1) Take no action on a process (either by maintaining the status quo (Option 1a) or modifying the current approach to harmonize gaps (Option 1b));
- 2) Defer a process and instead engage stakeholders on the National Academies March 2002 report to the Commission and review related activities;
- 3) Conduct a process at this time (either begin a broad deliberative process as suggested by the National Academies report (Option 3a); proceed with rulemaking (Option 3b) using an enhanced participatory process or a more direct process; or conduct a rulemaking focused on a narrow area (Option 3c)).

The Commission reviewed these process options and, in a Staff Requirements Memorandum (SRM), dated October 25, 2002, directed the staff to proceed with Option 3b, i.e., an enhanced participatory rulemaking, subject to the Commission comments provided in the SRM. The SRM specifically directed the staff to give fair consideration to all alternatives in developing a proposed rule so that a broad range of alternatives is identified and can be weighed by the Commission. Some alternatives for control of solid material have been described in SECY-00-0070 and in the March 2002 National Academies report. The SRM specifically noted that the range of alternative methods for control of solid material considered in a rulemaking should include:

- the current case-by-case approach;
- clearance;
- conditional clearance (the SRM specifically noted that the staff should explore and document the feasibility of conditional or restricted clearance and, in particular, determine the feasibility of options for conditional clearance that are effective and reasonably possible to implement, and that would increase public confidence in the process);
- a policy of no-release.

The SRM further indicated that the staff should develop a rulemaking plan and submit, for Commission approval, a proposed schedule for the rulemaking effort within 90 days of the SRM. The SRM noted that the schedule should reflect the Commission's desire to complete the rulemaking within 3 years.

2. Preparation of Modified Rulemaking Plan

In response to the SRM, the staff has developed a proposed schedule for completion of a proposed and final rule on control of solid materials within the time period noted in the SRM. Because much of the information on rulemaking processes and alternative methods for control of solid material is contained in the documents noted above, and because the Commission has provided direction to the staff in the SRM with regard to rule process and alternative methods, we are submitting the proposed schedule as part of a "modified" rulemaking plan to aid in guiding the rulemaking process per the approach suggested in Section 3.1(e)(1) of the NRC Regulations Handbook (NUREG/BR-0053, Rev 5, March 2001).

3. Components of Modified Rulemaking Plan:

Components of the modified rulemaking plan and its schedule (see Table 1) are as follows:

1. A Federal Register Notice (FRN) will be prepared and issued in February 2003. The FRN will provide background information on control of solid materials and note the considerable information collection efforts already conducted. In so doing, the FRN will specifically invite comment (including announcement of a workshop) on areas needing substantial new input (e.g., restricting use to certain industrial uses, placing solid material in a landfill) and also call attention to web-based opportunities for providing input on a range of other issues for which much information already exists (see #2, below). In addition, the FRN will also announce reopening of the 10 CFR Part 51 environmental scoping process that was conducted in conjunction with the June 1999 Issues Paper. Re-opening of the scoping process at this time would allow opportunity for stakeholders to provide input on areas needing further information, as well as on the environmental scope of the broad range of alternatives being considered.
2. A workshop is tentatively planned for May 2003. The focus of the workshop will be to obtain specific input from stakeholders as to the feasibility of options for conditional clearance that are effective, reasonably possible to implement, and able to increase public confidence in the process. It is important that a workshop on this subject be held early in the rulemaking because, although stakeholder comments on the June 1999 Issues Paper noted possible benefits of conditional clearance, they also expressed concern whether conditional clearance was economically viable, whether it could be guaranteed that restrictions would not fail causing material to end up in unrestricted uses, and whether landfills would accept solid material released under accepted NRC criteria (see Attachment 2 of SECY-00-0070).

Although not specifically shown on the schedule, the staff is planning on increased use of web-based methods for interacting with stakeholders. This already includes revision of the existing website to make it more accessible and to provide a more complete listing of the considerable information already collected on this subject. This also includes an effort underway to present the material in a more user-friendly format to solicit comments.

3. As discussed in SECY-02-0133, key technical information being developed includes: (a) technical bases for radiation surveys, doses, and material inventories; (b) additional information on costs of alternatives; and (c) technical bases on doses and costs of conditional clearance based on the workshop to be held in May 2003. This material will be used in preparing a GEIS, RIA, and draft regulatory guidance to support the proposed rule. At this time, the staff does not know the extent of the analysis that will be needed to evaluate conditional clearance in the GEIS or RIA, but will work to incorporate the results of the May 2003 workshop into appropriate analyses.
4. As also discussed in SECY-02-0133, the staff will continue to maintain cognizance of and, as appropriate provide input on, various other activities and initiatives by international and national organizations and agencies because those efforts can affect decision-making by the NRC. Thus, the staff will continue to follow efforts by the International Atomic Energy Agency and the European Commission; the U.S. Environmental Protection Agency, the U.S. Department of Energy, Agreement States, the American National Standards Institute; and the National Council on Radiation Protection and Measurements. These efforts by the staff are not shown as a separate line item on the attached schedule.
5. The staff will prepare a regulatory guide to aid in implementing any final rule that results from this rulemaking effort. The regulatory guide would be prepared in a manner similar to consolidated guidance efforts in other areas resulting in a NUREG report. It is the staff's intent that the draft guidance would be issued for public comment in conjunction with the proposed rule.

4. Next steps

The staff is providing this "modified" rulemaking plan to the States at the same time that it is providing it to the Commission. The staff has benefitted from obtaining State views through State involvement at the Fall 1999 workshops, as one of the invited stakeholders at the May 2000 Commission meeting, and on the Working and Steering Groups. In addition, the staff will continue to seek State comment through the Working and Steering Group members on the FRN planned for February 2003 and invite State representation at the May 2003 workshop.

If the Commission approves the schedule contained in the attachment, the staff will continue efforts that it already has underway to issue the FRN, develop the technical bases, and proceed with rulemaking. A number of items need to come about in a timely and satisfactory way for this schedule to be met, e.g., as noted in Item #3.3 above and in the footnotes to Table 1. The staff will inform the Commission, if there are problems with any of these items.

Table 1 - Schedule for Modified Rulemaking Plan on Control of Solid Materials

Item	Scheduled date
Rulemaking plan and schedule to Commission and Agreement States	Jan 2003
Contracting actions on costs, conditional use, soils, and GEIS and RIA	Jan 2003
FRN on status/conditional use/GEIS scoping issued for public comment	Feb 2003
Workshop on status/conditional use as part of GEIS scoping	May 2003
End comment period	June 2003
Initiate Reg Guide writing team ⁽¹⁾	July 2003
Prepare DGEIS/RIA/RegGuide input: - Current technical basis work (NUREG-1640/collective dose/multiple exposures/ other materials) - Soil information - Cost information - Tech basis on conditional use ⁽²⁾	Jan 2003 - NUREG-1640 Mar 2003 - NUREG1640 spreadsheets June 2003 - collective dose June 2003 - multiple exposure Sept 2003 - other materials Mar 2004 - cost and soil info Mar 2004 -conditional use info
Complete proposed rule, DGEIS ⁽³⁾ , and draft reg guide	July 2004
SECY paper to Commission	July 2004
Commission action on proposed rule	Expected date: August 2004
Issue Proposed rule, DGEIS, and draft reg guide	Sept 2004
Comment period closes	Dec 2004
Final Rule, FGEIS, & reg guide to EDO	Nov 2005

Footnotes:

- 1) This would be a consolidated guidance document
- 2) Dependent on outcome of May 2003 workshop on conditional clearance
- 3) Dependent on outcome of analyses and May 2003 workshop