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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff

RE: Financial Assurance Amendments for Materials Licensees, RIN 3150-AG85

Dear Ms. Vietti-Cook:

These comments concerning the notice of proposed rulemaking to amend the financial assurance requirements for materials licensees are submitted on behalf of the Council on Radionuclides and Radiopharmaceuticals (CORAR). CORAR members include manufacturers and shippers of diagnostic and therapeutic radiopharmaceuticals, life science research radiochemicals and sealed sources used in therapy, diagnostic imaging and calibration of instrumentation used in medical applications. CORAR recognizes the need for NRC to ensure that adequate financial resources are available for decommissioning in the event a licensee is unable to fulfil this responsibility. CORAR provides the following comments to address in general the nature of the amendments as well as specific aspects of the proposed rule.

General Comments

In the discussion of the proposed rule, NRC states that the changes to the regulations as proposed are focused on areas where the likelihood of inadequate funding relative to decommissioning costs is high. While it is understood that justification for the change to the upper limit available to large sealed source licensees for certification is based on studies by NRC contractors, it is the experience of our industry that estimates of decommissioning costs have been artificially inflated by the mandatory assumption that all material, including that in finished goods inventory, is a liability with an associated disposal cost. The justification for the amendment also fails to recognize that while decommissioning costs may have increased over the years, newer facilities may have incorporated

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designs and practices that, overall, would decrease the cost of decommissioning.

A more fundamental concern of CORAR is one that has implications for any regulation having to do with decommissioning financial assurance. The current regulatory approach regards sealed sources as a decommissioning liability regardless of their current value and despite the fact that there is no clear definition of radioactive "waste."

Historically, the term "waste" has been generally applied to sealed sources at the end of intended use regardless of whether they can be reused by someone else or their contents recovered as feedstock or reworked to extend the useful life of the sources. There are differing definitions in 63.2 and 110.2 with the latter specifically exempting sealed sources being returned to any qualified manufacturer from the import and export of waste regulations. In other contexts, there is no meaningful definition of radioactive "waste" as it applies to sealed sources or other radioactive materials. We take the position that the NRC cannot propose to define in a reasonable and practical sense the meaning of the term "waste broker" when the meaning of "waste" remains unclear.

Regardless of the lack of a clear definition of radioactive "waste," there is also a conflict in NRC policy and regulation as, on one hand some sealed sources are exempted from the definition of "waste" while, on the other hand, sources are included in the scope of licensed material subject to decommissioning financial assurance. The existing and proposed financial assurance requirements do not give credit to the licensee for the residual value of sources and, as a result, treat assets as liabilities, particularly in the tests used to determine whether or not a licensee can be self-insured.

Definitions

The proposed definition of "waste broker" in 30.4 is unacceptable. CORAR believes that "waste broker" cannot be defined when there is no clear, standard definition of "waste" anywhere in NRC regulation or statute. The proposed definition as worded applies to "radioactive material." This is the sort of general applicability taken by NRC that leaves the regulated community subjective to the interpretation that all used sealed sources are "waste" regardless of any residual value. As worded, the definition of "broker" would apply to any licensee that accepts radioactive material from other entities for the purpose of storage. While such a licensee would likely be subject to financial assurance requirements as a manufacturer or distributor, it is not appropriate to define such licensees as waste brokers. The definition would also subject carriers of radioactive materials, albeit in most cases as general licensees, to categorization as a waste broker. We do not believe this is the intent of the NRC. We agree with NRC that waste brokers engage in fundamentally different types of activities than other licensees, but the proposed definition fails to make this distinction.

Until the NRC thoroughly and carefully considers and defines the meaning of radioactive "waste," it will be unable to appropriately define, let alone regulate, waste "brokers" and their obligations for financial decommissioning assurance.

Certification Amounts

CORAR disagrees with NRC proposal to increase the certification amounts and the justification for this change. NRC has stated that disposal costs in recent years have risen and the increase has been

exacerbated by the volume and weight bases of costs and projected larger volumes generated by licensees. While these disposal costs have indeed risen, it is the experience of our industry that waste liabilities have actually been reduced by efforts to reduce weights and volumes, eliminate sources of waste streams and considering ease of decommissioning in the design, construction and operation of new facilities. A case in point relates to the inability of Barnwell to achieve South Carolina targets for generating volume-driven revenue due to changes in waste management practices by generators over the years. The proposed 50% increase in certification amounts is arbitrary and unwarranted.

Requirement for Updating Decommissioning Cost Estimates

The NRC states the need for a specific frequency requirement for updating decommissioning estimates and proposes that this be three years. CORAR believes that this is unnecessarily too frequent. While we agree that decommissioning costs can change significantly over a relatively short time, it has to do more with the size and scope of operations and the quantity and forms of material handled and less to do with external factors such as the cost of disposal.

We agree with NRC's statement that even requiring updates at least every 3 years would not address the problem associated with changing decommissioning costs. The NRC, licensees and the public would be better served by not prescribing a three-year update frequency, but by an approach where changes in operations or materials possession, subject to a license amendment, would warrant a revision to decommissioning estimates. This could be better managed by requiring an update to the estimate to be considered as part of the process of amending the license to reflect the change at the time the change is proposed. NRC could provide a list of changes warranting an update of decommissioning estimates. If no changes warranting an update occur between the time a license is issued or renewed, then there is no need to update the decommissioning estimate and financial assurance until the next license renewal. In lieu of prescribing a frequency for updates, updates could be arranged with licensees on a case-by-case basis according to the category to which the licensee belongs and the default history, if any, associated with that segment.

Another alternative would be the requirement for licensees to update their cost estimates if changes in conditions have resulted in the estimated costs exceeding a contingency that would have been required at the time the cost estimate was established in support of license application or renewal.

Regardless of the mechanism for updating decommissioning costs, the NRC needs to change its approach to the applicability of materials included in the scope of decommissioning and disposal costs. Licensees must not be required to account for the disposal of all materials for which possession and use is authorized in the estimated cost of decommissioning. This is especially true for sealed sources and other saleable goods in inventory as well as active or contaminated equipment that could be used elsewhere. It is unfair and beyond the boundaries of good business practice to consider assets as liabilities just because they are radioactive since NRC has not established within its regulations the difference between radioactive materials with residual value and radioactive materials as waste.

CORAR appreciates the intent of this proposed rule and the opportunity to express these comments. Please contact us if there should be any questions or if any additional information is needed concerning these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark A. Doruff".

Mark A. Doruff, CHP
Council on Radionuclides and Radiopharmaceuticals