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Rulemaking and Adjudications Staff
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville MD

SUBJECT: PROPOSED RULE ON CONTROLLING THE DISPOSITION OF
SOLID MATERIALS FROM LICENSED SITES

Ladies and Gentlemen:

I am writing in response to the Commission's request for additional information and comments on the above subject. Information presented in the Federal Register on 28 February 2003 indicates that the Commission has already received comments that closely mirror my own thoughts with respect to many issues (e.g. the difficulty of implementing and tracking a conditional use program, the high cost of requiring 100% disposal, and the complexities of developing dose-based release criteria). I will not belabor those points any further. However, I have some comments that do not appear in the summary of comments received to date. Please note that though I am employed by an Agreement-State regulatory agency, I am making these comments as a private citizen, not as a representative of the State.

First, I would like to note that in no other area of environmental or industrial regulation are areas and objects that were not contaminated by hazardous materials subject to the same sort of controls and restrictions as contaminated areas and objects. The most vocal opponents of allowing materials to be released from licensed radioactive materials facilities insist that everything in a facility be treated as if it were contaminated, even if the radioactive materials never impacted the area or object. This approach flies in the face of logic. If gasoline is spilled in the dirt yard of an industrial facility, the owners or operators of the facility are expected to clean up the spill and either treat or properly dispose of the contaminated dirt. If the spill affects some steel structure, they are expected to clean the structure to a certain standard. In neither case are they required to treat or dispose of everything in the whole facility as if it were contaminated simply because it was located within a certain distance of the spill area. Facilities where radioactive materials are used should be treated the same. If the facility can either demonstrate that an area or a piece of equipment was not impacted or clean that area/item to meet a certain standard, free release should be allowed. Only in cases where the facility is unable to meet a reasonable release standard should disposal in a low-level waste facility be required.

Second, I would like to respond to some of the arguments previously presented to the Commission.

- 1) Some respondents touched on the fact that “risks associated with these solid materials are avoidable and involuntary.” This is true, but it is important to note that it is impossible to live on this planet without encountering avoidable and involuntary hazards. Members of the public are exposed on a regular basis to hundreds of low-level hazards that are avoidable and involuntary, radiation among them. For example, members of the public may be exposed to miniscule amounts of radiation while occupying or traversing areas near sites where licensed activities are being performed (e.g. nuclear medicine facilities, radiography sites, etc.) because current regulations do not require the licensees to shield unrestricted areas to background. It is obvious that the Commission has determined that these miniscule exposures, though avoidable and involuntary, do not present a threat to public health and safety. The same logic should hold true for potential exposures to released materials. Furthermore, I believe that most members of the public are unaware that some of their voluntary actions increase their exposure to radiation (living in certain areas of the country, flying in airplanes, etc.). Since these people are not aware of them, these potential exposures could also be considered avoidable and involuntary, but there is no great social cry for full disclosure of all potential hazards associated with these activities.

- 2) Some respondents voiced the concern that any radiation dose increases cancer risk. This may be true in theory, but there is insufficient evidence to conclusively state that it is true in fact. The results of some studies may support this contention, but other studies indicate that there is a clear threshold below which there is no increased risk at all. Still other studies indicate that exposure to low levels of radiation may be necessary to keep the human immune system primed and functioning at optimum efficiency. The Commission would be ill-advised to take a position based on the false assumption that there is no safe level of radiation.

- 3) The Commission notes that the “metals and concrete industries opposed unrestricted use because it would result in a large negative economic impact on steel/ concrete industries because consumers would not buy products made with recycled solid material.” I find this argument hard to believe. The number of people actually paying attention to this issue is quite small, and items made from steel and concrete are ubiquitous in the United States. It is foolish to assume that some small perceived risk from radiation will induce a substantial number of people to stop buying and using cars and other products made from steel (or frighten people into not constructing or visiting facilities made of concrete). Unless the steel and concrete industries widely advertise the fact that their products contain materials recycled from licensed facilities, the general public will remain unaware and unconcerned. In fact, if those industries turn from their negative stance and embrace the idea with some enthusiasm, the general public will follow suit. As evidence, I would point to the growing industry of self-referred diagnostic radiology facilities. The ads for purveyors of such services tout the potential health benefits of early detection, but completely neglect to tell people about the radiation doses they will receive. As a result, the public pays attention to the potential benefits and largely ignores the concerns of regulators and other health professionals about the risks of the

procedures.

- 4) Some respondents stated that the amount of steel available from licensed facilities is small, and therefore the economic benefit of recycling is small. This may be true for the steel and concrete industries as a whole, but it is absolutely false when applies to the industries which generate the materials in question. High treatment and disposal costs are negatively impacting every industry and business that uses radioactive materials. I have first-hand knowledge of several small-business licensees that have disposed of their equipment and terminated their licenses because the cost of obtaining, maintaining and disposing of their materials and meeting regulatory burdens became prohibitive.
- 5) Some respondents said that generators of the solid material should handle their own problem and not pass it along to other stakeholders. This issue is related to the one I addressed in my initial comments and my response to number 3 above. There are three points to consider here.
 - a) For most of the materials in question, the “problem” is not real, but has been constructed out of the tremendous fear of radiation with which some people are afflicted. The release of non-impacted, minimally impacted and decontaminated materials from licensed facilities *should not be a problem*. If such materials were not treated in an illogical manner in the first place, the “problem” would never have existed. In a very real way, the activists who oppose release of clean or minimally impacted materials from licensed facilities have created the very problem they are now fighting.
 - b) The argument that licensees should handle the problem themselves is also disingenuous, because most of the activists making such arguments only apply that philosophy to certain issues. In general, these activists are in favor of government aid and social programs to address a host of other issues and problems, such as educating children, treating people with addictions, housing the homeless and assisting people with disabilities. They claim that every member of society has an ethical responsibility to support (and pay for) such programs, even though many citizens do not see any direct benefit from those programs. The activists deride those who advocate personal responsibility in those cases, calling them cruel and heartless. When it comes to radioactive materials, though, the activists not only demand personal (or corporate) responsibility, but they make the “problem” much worse that it ought to be. At some point, every member of our society has benefited, either directly or indirectly, from the use of radioactive materials. Selective application of the philosophy of personal responsibility to this issue is therefore unreasonable.
 - c) The “fix it yourself” argument also ignores the fact that many (most?) of the generators of the materials in question are government facilities. Forcing government entities and government contractors to spend huge amounts of money to send every scrap of material from all of their licensed facilities to licensed waste facilities will delay clean-up of the facilities and will waste money that could be spent on other programs. Furthermore, since most (all?) of the existing

licensed waste facilities are privately owned, such a course of action would enrich a few private companies at the expense of other government programs.

If you have any questions or require clarification of these comments, please feel free to contact me.

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