



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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PR 20,30,31,32,33,35,50,61,62,72,110,150,170, and 171
(71FR42952)

SEP 11 2006

OFFICE OF
AIR AND RADIATION

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

DOCKETED
USNRC

September 12, 2006 (12:23pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Ms. Vietti-Cook:

We are writing in response to the Nuclear Regulatory Commission's (NRC) Federal Register Notice, "Requirements for Expanded Definition of Byproduct Material" (71 FR 42952-42994, July 28, 2006). In that notice, comments were requested on NRC's proposed amendment of its regulations to include provisions required under the Energy Policy Act of 2005 for certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive materials (NORM).

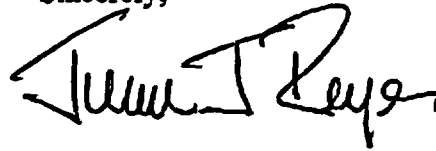
We would like to address two issues raised by the Notice and proposed amended regulations. First, we agree with the definition of "discrete source" included in the proposed rule. We believe it captures the important aspects of the discussions at the public and interagency meetings we have participated in with NRC, as well as the original intent of earlier versions of legislation incorporated into the Energy Policy Act of 2005 which were directed towards preventing weaponization of radium-226. While the legislation provides NRC, in consultation with the Environmental Protection Agency (EPA) and other federal agencies, with the authority to regulate discrete radium-226 and other NORM sources which pose a similar threat to public health and safety, or common defense and security, we firmly believe NRC should emphasize the security concerns that initially prompted the legislation. In this regard, we support NRC's proposed limitation of the definition to exclude radium-bearing wastes generated by a diverse number of facilities such as drinking water treatment plants or oil and gas production facilities. In accordance with the Act, we believe further consultation with federal agencies may be warranted should the NRC consider changing the definition from that currently included in the proposed amended regulations.

Second, the proposal is unclear as to how NRC intends to exercise its new regulatory authority to address currently contaminated sites, particularly when those sites are already being addressed under other authorities, such as EPA's Superfund program. NRC indicates that it will consider such sites on a "case-by-case basis as they are identified" rather than proposing requirements, because there is insufficient information available at this time. To assist NRC in defining the scope of activities that may be contemplated under its new authorities, we believe it is vitally important for NRC and EPA to discuss a collaborative approach to address licensing

discrete sources covered by this rule that are already considered part of Superfund efforts. This dialogue would complement ongoing coordination that NRC has with EPA under the jointly signed "Memorandum of Understanding Between the Environmental Protection Agency and the Nuclear Regulatory Commission: Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites."

Thank you for the opportunity to comment on the NRC's proposed amendment of its regulations to implement the Energy Policy Act of 2005. Should you have any questions on our response, please do not hesitate to contact us at 202-343-9290.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan J. Reyes". The signature is fluid and cursive, with the first name "Juan" and last name "Reyes" clearly distinguishable.

Juan J. Reyes, Director
Radiation Protection Division
Office of Radiation and Indoor Air

cc: S Walker, OSWER
L Setlow, ORIA



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PAGES TO FOLLOW: 2

TO: Secretary, US Nuclear Regulatory Commission

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U.S. Environmental Protection Agency comments on proposed rulemaking "Requirements for Expanded Definition of Byproduct Material," 71 FR 42952, July 28, 2006.