

**MEETING SUMMARY**  
**PART 40 INTERAGENCY JURISDICTIONAL WORKING GROUP**  
**December 3, 2007**

Attendees:

*Working Group Members*

Gary Comfort, NRC/FSME  
William Rautzen, NRC/FSME  
Loren Setlow, EPA  
Ken Weaver, State of Colorado  
    representing OAS and CRCPD<sup>1</sup>  
Brian Hearty, DOD/USACE  
Fred Ferate, USDOT  
Doreen Hill, OSHA

Cathy Mattsen, NRC/FSME  
Brian Littleton, EPA  
Edward Regnier, DOE  
Kristina Banovac, NRC/FSME  
Ahir Surender, OSHA  
Joan Olmstead, NRC/OGC  
Christopher Findley, USDOL/MSHA

*Other Participants*

Dennis Rathbun, NRC/FSME  
Kevin Hsueh, NRC/FSME  
Charles Simmons, Thompson &  
    Simmons PLLC

Patrice Bubar, NRC/FSME  
Mike LaFleur, WRT/RMD

Background and Purpose:

On December 3, 2007, the 10 CFR Part 40 Interagency Jurisdictional Working Group (IJWG) met to restart deliberations which had begun in 2001 and originally ceased in 2003. The IJWG ceased activities after the U.S. Nuclear Regulatory Commission (NRC) forwarded the IJWG's recommendations to the Commission as part of SECY-03-0068, "Interagency Jurisdictional Working Group Evaluating the Regulation of Low-Level Source Material or Materials Containing Less than 0.05 Percent by Weight Concentration Uranium and/or Thorium" and the Commission disapproved the staff's recommendation to seek legislation at that time. Subsequently, in a staff requirements memorandum (SRM) to SECY-06-0117, "Termination of Nuclear Regulatory Commission License for the Heritage Minerals Inc. Site in Manchester Township, New Jersey," dated August 2, 2006, the Commission reconsidered the issue and directed the staff to accelerate IJWG activities, with a goal toward developing an approach to more clearly specify NRC's authority over source material to uranium and thorium that is extracted and/or purposely concentrated for the use of uranium and thorium. The purpose of this meeting was to determine if the working group members from the various agencies represented on the working group still supported the original recommendations proposed by the working group in 2003.

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<sup>1</sup>the Organization of Agreement States and the Conference of Radiation Control Program Directors

## Meeting Summary:

After introductions were given, Mr. Comfort provided a brief summary of past activities (see Attachment 1 for presentation slides). After the presentation was completed the working group was asked to identify any new issues for consideration that may not have been discussed or required updating since the IJWG meetings in 2003. The main two areas identified for discussion were the U.S. Environmental Protection Agency's implementation of a 2000 Drinking Water Radionuclides Rule and the Energy Policy Act of 2005 (EPAct).

Since the 2003 IJWG meetings, it came to NRC's attention that facilities required to treat drinking water for uranium under the 2000 EPA rule may require licensing by NRC. NRC staff identified that this licensing could consume substantial amounts of resources at the drinking water treatment facility and at NRC and NRC Agreement States. NRC staff believes that implementation of the 2003 IJWG recommendation would remove these types of facilities from NRC jurisdiction while adequately maintaining public health and safety and the environment. The working group members from EPA and the Occupational Safety and Health Administration (OSHA) agreed that they believe that such a transfer in jurisdiction would maintain health and safety.

The EPAct was discussed because the law, among other things, transferred jurisdiction of certain uses of radium-226 to NRC as a new definition of byproduct material which includes any discrete source of radium-226 that is produced, extracted or converted after extraction, before on or after August 8, 2005 for the use for a commercial, medical or research activity. This change in jurisdiction was considered to be similar to the intent of the IJWG's original recommendation for uranium and thorium.

Each of the agencies was also asked to update the working group on any changes to their regulations which could impact the original IJWG recommendation. Although many agencies updated the working group about ongoing activities that were related to this area, none were identified that had a direct impact on the original IJWG recommendation.

After a break, the working group began discussing implementation issues related to the recommendation. Although the 2003 IJWG believed the recommendation would be best implemented through Congressional legislation, the Commission also directed the staff to consider alternatives. The working group therefore discussed implementation issues. NRC staff briefly discussed some of the alternatives they had considered, including Memorandum of Understanding and changes in interpretation of the Atomic Energy Act, NRC staff did not believe that these alternatives could effectively implement the recommendation. In general, most of the working group members agreed with the conclusion that legislation would be the most effective path to implement the regulation; however, the working group decided that it would continue to try to seek alternatives to legislation.

Finally, the working group took under consideration whether the original recommendation was still appropriate or whether other alternatives should be considered. Although the working group

still agreed that original IJWG recommendation was still the most appropriate, the working group could not reach resolution on the most appropriate way to implement the recommendation. As a result, the working group decided that it would be better prepared to make a final recommendation about implementation after they had seen draft legislative proposals from NRC. As a result, NRC plans to draft 3 alternatives: (1) a legislative proposal that would propose minimal changes to the Atomic Energy Act in an attempt to implement the IJWG recommendation, (2) a legislative proposal that would be more substantial and be similar to the legislation used for radium-226 in the 2005 EPAct or language similar to that originally recommended by the IWJG in 2003, and (3) an alternative to legislation. These proposals will be sent to the working group members and discussed at a future meeting of the IJWG.

Attachment 2 includes a transcript of the meeting.

Attachments:

1. Presentation Slides
2. Dec 3, 2007 Meeting Transcript

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