STATEMENT ON THE NUCLEAR REGULATORY COMMISSION'S RULE ON RADIOLOGICAL CRITERIA FOR LICENSE TERMINATION

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INTRODUCTION

Good afternoon. My name is Ramona Trovato; I am the director of EPA's Office of Radiation and Indoor Air. Today I represent the United States Environmental Protection Agency in our role of protecting the health of our fellow Americans from exposure to environmental radiation. My responsibilities include developing standards to protect the public and the environment from radiation. Protecting the public is more than just a duty to me, it's the right thing to do, even though it is not always the popular or easy thing to do. I know that my colleagues at the Nuclear Regulatory Commission feel the same way. That is why my staff and I are troubled by the NRC draft rule on radiological criteria for license termination that is before us today. We believe the Nuclear Regulatory Commission started on the right path, in the development of its decommissioning rule, but is now on the wrong path.

For many years, the EPA and NRC staffs have met on numerous

occasions to discuss issues pertinent to the proper cleanup of sites contaminated with radiation. They reviewed data, and discussed technical and policy issues. EPA participated in NRC's extensive national public workshops on site cleanup. Even though they did not always agree on every point, the result of that cooperative effort was the NRC's proposed decommissioning rule. EPA supported that rule. We believed, and continue to believe that the NRC proposal was protective of public health and the environment. EPA was prepared to exercise its option to exempt NRC from EPA rulemaking based on a finding that NRC's proposed rule was sufficiently protective of public health and the environment. I regret to say that the rule that NRC now proposes to finalize would not adequately protect either the health of our citizens or our nation's natural resources.

In August of 1994, the NRC proposed new regulations that would have mandated how clean nuclear power plants and other radiation facilities would have to be before they could be released to the general public. The proposed regulations were good for protecting the public and the environment for two basic reasons. First, they proposed sufficiently protective levels for cleaning the air, soil, and water (including groundwater) of radioactivity. The regulation would have ensured equity for all Americans who might be exposed to residual contamination, be it a single family living on the land and drinking from a well or an entire urban neighborhood living on released property. Second, if it was too difficult to clean up the radioactive pollution on the property for unrestricted use, the proposed standard allowed beneficial use of the land by requiring restrictions on uses of the land to ensure adequate protection of the public and the environment.

On November 15, 1996, Chairman Jackson in a letter to OMB,

stated that NRC planned to make significant changes to its proposed rule.

Changes were made, but EPA did not see these changes until April 1, 1997 (three weeks ago), when NRC sent copies of its draft rule to EPA. We were very disappointed. The changes that were made would permit a significantly increased risk of cancer to the public, would drastically reduce the protection of a major national, natural resource -- ground water, and would reduce public input to the decision process at sites difficult to clean up. NRC staff, in the preamble of the current draft, states its belief that EPA should find the NRC rule sufficiently protective. Let me state clearly and unequivocally that EPA cannot find NRC's draft rule to be sufficiently protective. That conclusion has been conveyed in writing by the Administrator of EPA to the Chairman of the Commission.

Today, I want to discuss three fundamental issues, and tell you about EPA's concerns. The first is the need to establish a level of protection from radioactive materials that is both adequately protective and consistent with the protection afforded the public from other environmental carcinogens. The second is the issue of adequate provision for public participation. The third is the need to protect our Nation's natural resources -- in this case, ground water that is a current or potential source of drinking water.

LEVEL OF PROTECTIVENESS

Let me first discuss the level of protectiveness afforded by the current draft rule. For unrestricted release of a site to the public, NRC originally proposed a cleanup level of 15 millirem per year. The current NRC draft increases this to 25

millirem per year, nearly doubling the allowed level of cancer risk to the public. But that is not the whole story. NRC has also added a provision that would allow as high as 100 millirem per year for unrestricted release. This level is an increase of about seven times their original proposal and, by NRC's own assessment, corresponds to a lifetime risk of cancer of one in two hundred (5 x 10-3). The draft does have some restrictions that would prevent some sites from going to 100 mrem/yr, but we think it is clear that in practice the rule often would allow sites to clean up to only 75, 80, or more. Although 80 is better than 100 mrem/yr, it still results in a cancer risk of 1 in 250, a risk that is simply unacceptably high. It is ironic to note that at the same time the President was saying, in his State of the Union message, "If you pollute the environment, you should clean it up.", NRC was loosening up its cleanup standards. Why is this relaxation needed for NRC licensees?

Both the proposed and the current draft provide flexibility for difficult-to-clean up sites by including criteria for license termination under restricted use. The criteria include, among other things, requirements that the licensee make provisions for legally enforceable institutional controls that will protect citizens from the higher levels of contamination that are left in place. The licensee must also provide sufficient financial assurance to enable an independent third party to provide the necessary control and maintenance. We agree with this flexibility and the efficiency it provides, and believe this flexibility is sufficient for the tough cases that NRC is concerned about.

EPA's Superfund experience is that protective levels can be met with creative land use controls and reasonable cleanup efforts. There is simply no need to allow higher risks to the

public just to decommission sites. We have repeatedly asked NRC for specific examples of cleanups where protective levels cannot be met. We have yet to see any. We would hope that NRC would not change a fine proposal and expose the public to unnecessary risks without first allowing us to work together on a real world example of a supposedly problem site.

NRC has expressed the view that this draft rule would satisfy Federal radiation protection guidance, proposed for public comment by EPA on December 24, 1994. For the record, I wish to state that it would not. EPA's proposal made a clear distinction between a theoretical upper bound on exposure of individuals to radiation from all sources, now and in the future, and limits applicable to individual sources. It specified that regulations applicable to any individual source of exposure should be limited to well below that theoretical upper bound. The objective of the guidance was to achieve consistency among the risk management goals that apply to all environmental carcinogens, including radiation, under a wide range of environmental statutes. The goal specified was a lifetime risk of no greater than about one in ten thousand. Perhaps the proposed guidance did not make this adequately clear. We will ensure that any final recommendations to the President are unambiguous on this point.

NRC's draft final rule would permit, at the extreme, release of a site for unrestricted use with residual radioactive contamination yielding the full value of the theoretical upper bound on dose to an individual - 100 mrem per year. The fact that the rule contemplates that a lower value, 25 mrem per year, will normally be met is irrelevant. The function of a standard is to provide a limit for the difficult cases, not to identify the parameters bounding the easy ones.

To illustrate the unreasonableness of this change in the allowable dose, let me point out that nuclear power reactors are now operating successfully under EPA's standards, set almost 20 years ago, with maximum releases of radioactive materials that correspond to doses of approximately 15 mrem per year effective dose equivalent. NRC's implementation of this standard has, in both guidance and practice, been even more protective. Under the license termination draft before us today, a reactor site could be released for unrestricted use with residual contamination yielding doses approximately seven times higher than those permitted from a reactor during its operating lifetime, when it was producing the benefit of electrical power to society -- thus promoting inconsistent protection of the public. I must also point out that a 100 mrem dose would result in a risk that is seven times higher than would be permitted for other environmental pollutants under the Nation's laws governing the cleanup of contaminated sites. Why should a citizen who lives on or near a former NRC-licensed site be exposed to a higher risk of cancer than one living near an operating nuclear power plant, or someone living on or near a former superfund site? NRC's proposed rule recognized this dichotomy, and protected everyone equally.

This year's State of the Union address included an exhortation to protect our environment in every community so that our children grow up next to parks. There are over 4,500 NRC licensees that could release contamination into the environment, and these licensees should live by a simple rule: If you pollute our environment, you should pay to clean it up. To put it bluntly, radiation should not be treated as a privileged pollutant. You and I should not be exposed to higher risks from radiation sites than we would be from sites which had contained

any other environmental pollutant.

In a separate, but related issue, on September 16, 1996 NRC released a series of Strategic Assessment Issue Papers. One dealt with decommissioning of non-reactor facilities. That paper included an option for transferring certain sites to the EPA's Superfund program. Among the reasons cited for the transfer, NRC said that this option would enable EPA to utilize its greater legal authority to compel remediation. NRC must have known that transferring these sites to Superfund would ensure that they would be cleaned up to criteria similar to those set forth in their proposed rule for radiological criteria for license termination. Now, NRC is suggesting a different, more lenient standard for the rest of their licenses. Why should we have a double standard for these cleanups?

NRC says in the preamble of their current draft that EPA should find their rule to be sufficiently protective. Let me emphasize once again, NRC's draft rule is not sufficiently protective.

PUBLIC PARTICIPATION

I know that NRC and EPA share the view that early, direct, and meaningful public involvement is essential in decision-making to protect our environment. In fact, the Commission states that public involvement is a cornerstone of strong, fair regulation of the nuclear industry.

I know, however, that there are differences in how EPA and NRC translate policy into action. In its regulatory requirements under this decommissioning rule, NRC does not require itself to incorporate or respond to public comments regarding its own license termination actions.

NRC has weakened public participation requirements, while at