

# STATE OF COLORADO

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Colorado Department  
of Public Health  
and Environment

8/29/08

Mr. Kevin O'Sullivan  
Office of Federal and State  
Materials and Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001,

**Subject – RIN 3150-AH45 – Colorado comments on final Decommissioning Planning Rule.**

Dear Mr. O'Sullivan,

Thank you for the opportunity to provide feedback and comment on the final rule for Decommissioning Planning. Colorado submitted comments on the draft rule on May 8, 2008, and also contributed to the CRCPD comments received on May 7, 2008.

We are extremely concerned about the wording and logic of the final rule with respect to Part 40 licensees. Colorado believes that the existing monitoring requirements in Appendix A to Part 40 and the more prescriptive requirements in Part 20 are NOT equivalent and that Part 40 licensees should be subject to requirements equivalent to the new Part 20 requirements.

Since Part 40 licensees are not subject to the License Termination Rule, it would be appropriate for the NRC to modify Criteria 7 to be consistent with the new requirements in Part 20.1501. This way there would be consistency between the rules, and better monitoring of Part 40 sites would result in fewer legacy sites.

No fewer than three industry commenters<sup>1</sup> submitted the following language in their comments as a reason to exempt Part 40 licensees from the requirements of the proposed rule:

“[UPA, Honeywell, Homestake] suggests that the proposed rule is written too broadly in that it fails to properly account for the different activities and varying risks associated with different categories of NRC licensees. In particular, the rule does not adequately account for the type of operations or low radiological risks associated with facilities at the front end of the fuel cycle - that is, Part 40 licensees such as uranium mills, UF6 conversion facilities, and solution mining facilities.”

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<sup>1</sup> Honeywell International, Homestake Mining Company of California, and the Uranium Producers of America

UPA, et al further submits that "...despite the high costs, the characterization is unlikely to reduce the already-low radiological risk associated with the natural uranium at Part 40 facilities, or reduce the already-low risk of contamination of groundwater from natural uranium. This is because natural uranium ore and U308 are not highly soluble and therefore have a low potential to cause groundwater contamination during the period of operation. For dry processes and solid material, the risk of groundwater contamination is therefore quite low.

There are numerous misleading and incorrect statements in these arguments:

1. Legacy sites are not limited to high-risk isotopes or risk-based limits. That is part of the problem – Part 40 monitoring is driven to ensure dose limits are not exceeded. As stated in numerous locations in the supporting documents going back to SECY-03-069, chronic leaks that go undetected and don't pose an excursion of dose limits have lead to large areas of contamination that have lead to legacy sites. The low-risk argument is a red herring and deflects away from the issue that NRC is trying to resolve.
2. Uranium ore and U308 exists in two chemical states +4 and +6. The +6 state is soluble and has resulted in the plethora of plumes that NRC, DOE and States have had to address. Please note that Colorado just last month issued a Notice of Violation to the Cotter Corporation for off-site groundwater contamination from its Canon City, CO milling facility (not the impoundments). The isotope that is in violation of groundwater standards is uranium. As noted by another commenter, NRC seems to have ignored the Moab site in its evaluation; perhaps that is because the surety situation there was so dismal that the site had to be transferred to Title I so that you and I as taxpayers would pay for the cleanup instead of the licensee. The Atlas mill at Moab alone should be reason enough for Part 40 licensees to be subject to the more stringent requirements.
3. The statement made by the commenters about uranium solubility is specious since without the solubility of uranium, there would be no in-situ leach industry.
4. Saying that uranium is a low-risk isotope and therefore the industry should not be subject to the monitoring requirements ignores the fact that the chemical components of byproduct material are also regulated under UMTRA. Even if uranium is low risk, the reagents and solvent extraction chemicals can contribute to voluminous contamination that will require remediation. Without specific requirements for monitoring, the decommissioning warranties will likely be inadequate.
5. One of the problems that has contributed to legacy sites has been the light touch the Commission has taken with the uranium recovery industry. The front end of the fuel cycle has been the source of so many legacy sites due to the fact that it did not have strict requirements for contamination control. The Cold War is over, and the industry is no longer in financial dire straits due to the resurgence of uranium prices - it is time for this industry to have requirements consistent with other industries that generate wastes that pollute the environment.

NRC states that "...the cost to the States and Federal Government to enforce and then fully decommission a single legacy site is much higher than the cost to prevent the occurrence of a legacy site through amended regulations." Colorado agrees with this statement and hopes that NRC will amend Criteria 7 to be consistent with the requirements of Part 20.1501 of the final rule. This way the unambiguous exemption from Part 20 can stand and the industry will still have consistent requirements under Part 40.

As we went through the comments submitted by the other States we identified some comments we would like to concur with that were not submitted during the comment period. We agree with the State

Mr. Kevin O'Sullivan

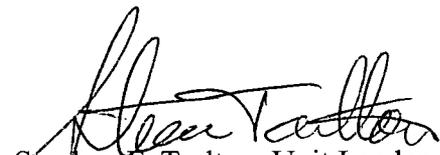
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of New York, who stated "As presently drafted, the proposed regulations will not protect the environment or promote safety, will not increase public confidence in the NRC's ability to regulate, and will not make NRC actions more effective, efficient and realistic. The proposals are not consistent with the Atomic Energy Act, the Administrative Procedures Act, and the National Environmental Policy Act." They further state..."the text of the proposed regulations - contrary to their stated intent - actually will encourage licensees to postpone the cleanup of radionuclide leaks until some far off future date, by which time a plume may be more difficult and expensive to decontaminate. For years, licensees and the NRC have ignored and failed to address the increasing number of incidents involving the release of radionuclides leaking from underground systems or components. The NRC's final regulation should compel licensees to (1) prevent such pollution in the future and (2) clean up the existing radionuclide pollution now. Finally, New York states "Under the proposed regulations, when a spill or a leak is found, a licensee will merely write a memo and place it in an internal file cabinet. The proposed regulations and the Federal Register preamble make clear that the licensee is not required to send the memo to the NRC regional office or headquarters and, of course, that memo will never come close to being added to the "public side" of the Commission's ADAMS document management system, nor will the Commission ever "possess" the document for purposes of the federal Freedom of Information Act. Under this proposed framework, one thing is sure: the NRC and the industry intend that the public will never see the company's memo documenting the leak, spill, or plume. The final rule must not implement such a "hide-the-ball" arrangement. Rather, the final rule must ensure public knowledge of contamination at power reactor sites - as well as at "materials" license sites and dry cask storage sites. Accordingly, the final rule must require that all licensees submit their reports to the NRC and that the NRC promptly make the reports available to the public.

Massachusetts (MOPH) feels that, once residual radioactivity arising from licensed operations is determined to have migrated into the soil or groundwater under a site, its nature and extent must be determined by additional monitoring in order to ensure that adequate funding will be available for its removal at decommissioning.

If you have any questions regarding this issue, please contact Phil Egidi of the Radiation Management Unit at [phil.egidi@state.co.us](mailto:phil.egidi@state.co.us) or via phone at (970) 248-7162, or (303) 692-3447. Additional questions or comments can be directed to me at 303-692-3423 or [steve.tarlton@state.co.us](mailto:steve.tarlton@state.co.us).



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