



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
URANIUM RECOVERY FIELD OFFICE
BOX 25328
DENVER, COLORADO 80225

MAR 9 1989

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MEMORANDUM FOR: Paul Lohaus, Chief
Operations Branch
Division of Low-Level Waste Management and Decommissioning

FROM: R. Dale Smith, Director
Uranium Recovery Field Office, Region IV

SUBJECT: PROPOSED RULE ENTITLED "CUSTODY AND LONG-TERM CARE OF
URANIUM MILL TAILINGS SITES"

We have reviewed the proposed rulemaking package on the above subject. We have provided some specific comments on the attached marked-up draft.

In general, the proposed rulemaking does not show that adequate thought has been given to the process for terminating a license under Part 40 or Part 150 and making the transition to a license issued to the appropriate custodial governmental body. In addition, I will only mention my previous comment that a General License that requires a specific application is inconsistent with the provisions of our regulations.

As we have discussed, we will not (can not) terminate a license until we make a finding that all of the appropriate requirements have been met. These requirements are such that there is no need for ongoing maintenance. The surveillance and control contemplated by the Criterion 10 funding in Appendix A, 10 CFR Part 40, is for an annual visual inspection, as is noted in one part of the paper. Thus, under expected conditions of termination, the only requirement on DOE or the State taking custody will be to conduct such an inspection. Allowing for departure from this condition, under the provisions of Section 84c of the Atomic Energy Act, any reclamation plan that has been approved that requires any further maintenance activities will be clearly identified by NRC and NRC will specify the activities to be performed and the licensee will provide the necessary funding to carry them out. Thus, the whole premise of the Statement of Considerations discussion of the proposed rule that the long-term licensee should be involved in our determination of completion of closure and our license termination is totally inappropriate. Also inappropriate is the notion that the current licensee should be involved with the long-term licensee in the preparation of the Surveillance and Maintenance Plan.

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As was discussed in our annual Program Review last month, there is a real need for a Regulatory Guide that specifies what information a licensee should provide to NRC to demonstrate that closure has been satisfactorily accomplished. While we have an approved reclamation plan that we have agreed should meet the requirements of Appendix A, the licensee should provide final evidence that the construction was carried out in accordance with the plan. Such things as "as-built" drawings, summary of QA results, location of settlement markers, etc., are all candidates for such a guide. If suitable information is submitted to NRC for purposes of termination, this information will also provide the foundation for DOE or the State to carry out their surveillance functions.

The way that the rule is described, there could be a period after we terminate a Title II license and before DOE or the State becomes a General Licensee. I don't believe that the law or our regulations contemplate an unlicensed site. It raises the question of what might happen if DOE or the State does not, or can not, submit an acceptable SMP. As written, the rule would seem to permit this condition to go on for as long as DOE doesn't or can't comply.

There seems to be some confusion over the need for title transfer of a Title II site. The rule seems to have picked up on a provision of UMTRCA [Sec 83(b)(4)] that grandfathers old sites and allows flexibility in determining whether transfer of the land is necessary. One factor to be considered is the licensee's ability to transfer the title and custody. What is ignored in the rule is the overriding requirement of Section 83a and our own regulations in Part 40 and 150 that require that any license issued or renewed after 1978 shall contain conditions that assure that ownership shall be transferred to the United States or the State. All references to this should be corrected in the Statement of Considerations and the rule itself.

It is obvious to me that much more effort needs to be expended to bring this rule into the realm of reality. I recommend that NMSS not concur in the publication of the proposed rule at this time.



R. Dale Smith, Director
Uranium Recovery Field Office
Region IV

Attachment: As Stated

Document Name:
PROPOSED RULE 10 CFRA

Requestor's ID:
HODGE

Author's Name:
mark haisfield

Document Comments:
gen 11c for long-term custody of uranium mill tailing sites

**NUCLEAR REGULATORY COMMISSION
10 CFR Part 40**

**Custody and Long-Term Care
of Uranium Mill Tailings Sites**

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue general licenses that would permit NRC to license the custody and long-term care of reclaimed or closed uranium or thorium mill tailings sites after remedial action or closure under the Uranium Mill Tailings Radiation Control Act have been completed. The intended effect of this action is to provide a surveillance procedure to ensure continued protection of the public health and safety and the environment. This action is necessary to meet the requirements of Titles I and II of the Uranium Mill Tailings Radiation Control Act. An Advance Notice of Proposed Rulemaking was issued on August 25, 1988.

DATE: Comment period expires (60 days after publication). Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m.

Comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis can be examined at: The NRC Public Document Room, 2120 L Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NL/S-260. Telephone (301) 492-3877.

SUPPLEMENTARY INFORMATION:

- I. Background.**
- II. Proposed Action.**
- III. Uranium Mill Tailings Remedial Action Amendments Act of 1988.**
- IV. The Stabilization and Long-Term Care Program (Title I and Title II).**
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I. Background

In the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) the Congress recognized that uranium mill tailings may pose a potentially significant radiation health hazard to the public. One of the measures enacted by Congress to control this hazard is to place the long-term care of the uranium or thorium mill tailings disposal site, after completion of all remedial actions or closure, in the hands of government.

Title I of UMTRCA defines the statutory authority and roles of the Department of Energy (DOE) and the NRC with regard to the remedial action

program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by DOE, these sites be maintained by the DOE or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMRCA contains similar requirements for NRC licensing of presently active uranium or thorium mill tailings sites following their closure and operating license termination. These sites would be licensed by the Commission upon their transfer to the Federal Government or the State in which they are located, at the option of the State. These proposed regulations will complement other UMRCA required regulations which have been completed and cover activities through closure.

An Advance Notice of Proposed Rulemaking was issued on August 25, 1988 (53 FR 32396) in which the NRC requested comments on this proposed rulemaking and three specific topics. No comments were received specifically addressing these topics.

II. Proposed Action

The proposed regulatory additions to Part 40 will provide for two new general licenses. The general licenses in §40.27 and §40.28 will correspond to Title I and Title II of UMRCA, respectively. The provisions in §40.27 would apply to inactive sites and the provisions in §40.28 would apply to active sites. Although the requirements in §40.27 and §40.28 will differ somewhat due to the differences in Title I and Title II of the Act, the goals to be achieved by the long-term care licensee are the same.

These proposed regulations deal only with uranium or thorium mill tailings sites after remedial actions (for Title I) or closure activities (for Title II) have been completed. Upon satisfactory reclamation (by DOE for Title I, or an NRC or Agreement State licensee for Title II) to applicable closure standards, the NRC will receive a detailed Surveillance and Maintenance Plan (SMP) from DOE or an appropriate State. The SMP will discuss ownership (whether Federal or State) and custody (agency responsible) of the site, site conditions, the surveillance program, required follow-up inspections, and how and when long-term care and emergency repairs will be accomplished. (See the section

the mechanism by which the determination of state or federal custody is made should be clarified. 3

entitled "The Surveillance and Maintenance Plan".) The general license will become effective for each individual Title I or Title II site upon NRC receipt of an SMP that meets the requirements of the general license.

For sites governed by the provisions of §40.27 (Title I sites), the general license applies only to the DOE or another Federal agency designated by the President. For sites governed under the provisions of §40.28 (Title II sites), DOE, or another Federal agency, will prepare and submit the SMP, unless the State, at its option, decides to take custody of the site and be included in the general license. In the latter case the State would prepare and submit the SMP. The authority to grant a long-term care license is reserved to the NRC. States may be the long-term care agency, but are not authorized to grant this type of license. See Section 83 b(1)(A) of the Atomic Energy Act of 1954 as amended and 10 CFR 150.15a.

The general licensees for long-term care are exempted from 10 CFR Parts 19, 20, and 21. These parts cover notices, instructions, notifications to workers, and inspection in Part 19, standards for protection against radiation in Part 20, and reporting of defects and noncompliance in Part 21. These parts deal with operational activities. A long-term care license covers activities after all operational and clean-up has been completed.

Under normal circumstances the long-term licensee will spend a day or two at each site each year to check that the site's conditions are as expected. The site will be closed to meet 40 CFR Part 192, Subparts A, B, and C (for Title I sites) and Appendix A criteria (for Title II sites) which essentially eliminate direct radiation and air particulates and control radon releases within specified limits. Site closure will, therefore, eliminate the need for specific radiation controls as specified in Parts 19, 20, and 21 under normal conditions.

If damage to the site requires significant repairs then the long-term care licensee must notify NRC. NRC will likely issue orders to address the specific circumstances. NRC will require the long-term ^{CARE} licensee to demonstrate whether portions of the requirements in Parts 19, 20, and 21 should be applied. NRC

the notification to NRC should address this.

CONSISTENT WITH 10 CFR 192-194 DESCRIPTION OF SMP

THIS IS CORRECT VIEW

may then impose appropriate portions by order on a site specific basis depending upon the damage and the type of repairs necessary.

A minor administrative change is being made to Appendix A Criterion 12 to allow for a more efficient reporting program. Criterion 12 states that inspection results must be reported to the Commission within 60 days following each inspection. Because each long-term licensee, primarily the Department of Energy, will most likely have multiple sites, we are proposing to allow annual reports which will cover all sites under their jurisdiction. Any site where unusual damage or disruption is discovered during the inspection, however, would require a preliminary site inspection report to be submitted within 60 days. The timing for submittal of the annual report will be based on when the long-term care licensee will be doing the inspections and will be submitted within 90 days of the last site's annual inspection.

Criterion 12 deals with Title II licensees. The long-term care licensee for Title I should have comparable reporting requirements, which will be specified in the Surveillance and Maintenance Plan.

There are some differences in requirements for sites located on Indian lands. For Title I sites, the Indian site will remain in the ownership of that tribe. The NRC and DOE have generally agreed that sites on Indian lands should be handled in the same manner as other Title I sites, including conduct of surveillance and maintenance under proposed §40.27. We also understand that DOE and the appropriate Indian tribes have agreed that DOE would provide for long-term care. Four of the 24 Title I sites are on Indian lands.

For Title II sites on Indian lands it is not clear who will be responsible for monitoring, maintenance, and emergency measures at the site. Currently, only one site falls into this category. UMTRCA provides that long-term monitoring and maintenance will be done by the United States and that the licensee will be required to enter into arrangements with the Commission to ensure this monitoring and maintenance. However, UMTRCA was not explicit as to which Federal agency is responsible for the site, and should these sites ever require emergency measures, additional authorizations may be required. The

basic obligations for these sites have already been codified in Part 40, Appendix A, Criterion 11F, and are not part of this rulemaking. NRC is providing flexibility in this area and will work out long-term care arrangements for these sites on a case-by-case basis.

Both §40.27 and §40.28 allow for potential future uses of the sites. As provided in UNTRCA, any future use would require a separate Commission license to assure that the site remains or is restored to a safe and environmentally sound condition. See the, "Future Uses of the Disposal Site" section.

The proposed rulemaking would issue a general license to governmental bodies for custody and long-term care of uranium or thorium mill tailings sites after closure, pursuant to statute. Therefore, this rulemaking has no significant impact upon the private sector. There will, however, be some amount of coordination between an existing licensee and the long-term care licensee during site closure activities. The long-term care licensee should be involved in the closure and license termination process. This will allow the long-term care licensee to better prepare the Surveillance and Maintenance Plan by having more knowledge of how site closure was accomplished. NRC will not terminate the operational license until the NRC is satisfied that the operational licensee has provided the information and opportunity for involvement necessary for the long-term care licensee to prepare the SMP.

III. Uranium Mill Tailings Remedial Action Amendments Act of 1988

This Act was signed by the President on November 5, 1988, and provides among other things an extension of the UNTRCA Title I program. It allows the Department of Energy until September 30, 1994 (from 1990) to perform remedial actions at designated uranium mill tailings sites and vicinity properties. There is one major exception to the 1994 date. The authority to perform groundwater restoration activities is extended without limitation. However, to meet the current proposed EPA ground-water standard, compliance with the groundwater protection provisions at the disposal site would need to be accomplished by the 1994 date.

Not Necessary

NOT
YES -
A Reg Guide
is needed
to define
what info the
licensee submit
to NRC to
make this
determination

and submit
a suitable

The reason for the extension to 1994 is to allow DOE enough time to complete remedial actions at all designated sites. The groundwater restoration extension was provided due to the potential that EPA groundwater standards may take DOE decades to complete for some sites. EPA is currently issuing new groundwater standards in response to a September 3, 1985 decision by the 10th Circuit Court of Appeals in which the groundwater provisions of the EPA uranium mill tailings cleanup standards (40 CFR 192.20(a)(2-3)) for Title I sites were set aside and remanded to EPA. The new standards are not expected to be made final before March, 1989. Based on the proposed EPA standards (52 FR 36000; September 24, 1987), the DOE believes that groundwater restoration activities will take significantly more time than originally planned.

As a result of this Act, the NRC is planning to allow licensing of Title I sites to occur in two phases, if needed. The first phase would allow DOE, if necessary, to do all remedial actions, which include complying with the groundwater protection standards addressing the design and performance at the disposal site for closure and licensing. The Act requires this to be completed prior to September 1994. The second phase, which can go on for many more years, would deal with existing groundwater restoration. When groundwater restoration is completed, the Surveillance and Maintenance Plan would be appropriately amended in the case when the residual radioactive material is not relocated. Until the EPA standards are finalized, and DOE and NRC evaluate the sites based on these standards, we will not know how many sites would likely be involved in this two step licensing process.

The Act did not resolve the potential delay of licensing Title I sites due to the groundwater provisions in EPA's proposed standards requiring mandatory post-closure performance monitoring. NRC's options may extend from a case-by-case use of EPA's supplemental standards provisions to exempt such sites entirely from performance monitoring to the inflexible consequence of delaying all such licensing until completion of the groundwater performance monitoring program. Such a delay could extend for up to 30 years or more. Based on interaction with other Federal agencies the NRC staff has selected the two phased approach discussed above to optimize flexibility.

NRC comments to EPA on their proposed standards suggested ways to remedy the situation. The final EPA standards may resolve this issue, but could also introduce new uncertainties. Since the proposed EPA standards are legally binding until final rules are issued, this rule is designed to have flexibility to address various situations.

IV. The Stabilization and Long-Term Care Program (Title I and Title II)

Although the end result for long-term care licensing for Title I or Title II sites is similar, the processes leading up to closure of Title I or Title II sites are different. The following provides background on these processes, as well as some of the differences between Title I and Title II licensing.

Title I (24 sites)

UMTRCA charged the EPA with the responsibility for promulgating remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with radioactive materials at the sites. The final standards were promulgated with an effective date of March 7, 1983 (48 FR 602; January 5, 1983). See 40 CFR Part 192-Health and Environmental Protection for Uranium Mill Tailings, Subparts A, B, and C.

The Department of Energy (DOE) will select and execute a plan of remedial action that will satisfy the EPA standards and other applicable laws and regulations. All remedial actions must be selected and performed with the concurrence of the NRC. The required NRC concurrence with the selection and performance of proposed remedial actions and the licensing of long-term care of disposal sites will be for the purpose of ensuring compliance with UMTRCA.

For Title I sites in which NRC has concurred with the selection of remedial action, prior to final promulgation of standards by EPA, these remedial actions will not be impacted by the eventual scope and content of final standards. NRC interprets that UMTRCA, allows grandfathering for those

sites where NRC concurrence with the selection of remedial action was obtained under applicable EPA standards, draft, proposed or otherwise in place at the time such NRC concurrence was given.

The stabilization and long-term care program for each site has four distinct phases. In the first phase DOE selects a disposal site and design. This phase includes preparation of an Environmental Assessment or an Environmental Impact Statement, and a Remedial Action Plan. The Remedial Action Plan is structured to provide a comprehensive understanding of the remedial actions proposed at that site and contains specific design and construction requirements. NRC and State/Indian tribe concur in the Remedial Action Plan to complete the first phase.

The second phase is the performance phase. In this phase the actual decontamination, decommissioning, and reclamation at the site is done in accordance with the Remedial Action Plan. The NRC and the State/Indian tribe, as applicable, must concur in any changes to this plan. At the completion of reclamation activities at the site, NRC concurs in DOE's determination that the activities at the site have been completed in accordance with the approved plan. Prior to licensing, the next phase, title to the disposed tailings and contaminated materials and the land upon which they are disposed must be in Federal custody (except for sites on Indian lands) to provide for long-term Federal control, at Federal expense.

NRC concurrence in the DOE determination that reclamation of the site has been accomplished in accordance with the approved plan may be accomplished in two phases. The Uranium Mill Tailings Remedial Action Amendments Act of 1988 allows for a two phased approach for Title I sites. The Act will allow DOE to do all remedial actions, other than groundwater restoration, for the first phase of closure and licensing. The second phase, which can go on for many years, will deal with existing groundwater restoration. When groundwater restoration is completed, the SHP will be appropriately amended. See the section on this Act for more details.

*the terms survey
"received" are ambiguous and
could result in confusion
determining an effective date*

The third phase is the licensing phase. The general license does not apply until (1) NRC concurrence in the DOE determination that the site has been properly reclaimed and (2) a suitable Surveillance and Maintenance Plan has been received by NRC. The SMP should be submitted within 4 months of the NRC concurrence in completion. NRC concurrence with completion indicates that the site has been stabilized in accordance with EPA standards. This NRC concurrence may be completed in two phases as discussed above and in the section on the Act. There is no termination date for the general license.

The final phase of the program is surveillance and monitoring and begins after NRC receives the SMP. In this phase DOE and NRC periodically inspect the site to ensure its integrity. The Surveillance and Maintenance Plan will require the DOE to make repairs, if needed.

One of the requirements in the EPA standards is that control of the tailings should be designed to be effective for up to 1000 years without active maintenance. Although the design of the stabilized pile is such that reliance on active maintenance should be minimized or eliminated, the NRC license will require emergency repairs as necessary. In the event that significant repairs are ever necessary, a determination will be made as to the need for additional National Environmental Policy Act (NEPA) actions, and health and safety considerations from Parts 19, 20, and 21 on a site specific basis.

Title II

UMTRCA also charged EPA with the responsibility for promulgating standards for active uranium or thorium sites. EPA completed this in Subpart D and E of 40 CFR Part 192 issued October 7, 1983 (48 FR 45946).

Title II sites have active NRC or Agreement State licenses. Each licensee is responsible for having a closure plan that is approved by the NRC or an Agreement State. This plan describes how the licensee will close the site to meet all applicable standards after completion of operations.

This, and words that follow, indicate period when the site will not be under either license. Don't think that the law would permit this.

Before the NRC, or an Agreement State, terminates a license the site must be closed in a manner which meets applicable standards. These include the requirements contained within 10 CFR Part 40 - Domestic Licensing of Source Material, or similar Agreement State requirements. In addition, 10 CFR 150.15a requires that prior to the termination of any Agreement State license for byproduct material, the Commission shall have made a determination that all applicable standards and requirements have been met.

Following the operating license termination, invoking the general license for Title II sites is similar to the process used for Title I sites. The most significant differences are:

1. A State, at its option, may take over long-term care of a Title II site instead of the DOE.
2. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived for a Title II site.
3. Potential future uses of a Title I site are limited to subsurface rights, whereas, a Title II site could also potentially allow the usage of surface rights. (See the section entitled "Future Uses of the Disposal Site".)
4. There is a difference in UNTRCA regarding custody of Title I and Title II sites. All surface and subsurface rights for a Title I site must be in Federal custody (except when on Indian land). For a Title II site the Commission may take into account the status of ownership and rights to the land, and the ability of a licensee to transfer title and custody to the United States or a State in cases where the licensee does not own all existing land rights.
5. Title II licensees are required to pay a minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance. This charge must be paid to the general treasury of the United States or

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to an appropriate State agency prior to the termination of a uranium or thorium mill license. The minimum charge may be adjusted based on site-specific requirements in excess of those specified in Criterion 12 of Appendix A.

- the determination for*
6. The determination that Title I sites have been reclaimed may be done in two phases, whereas Title II sites will be done only once *after* license termination. *Before!*
 7. There is an additional Title II requirement when an operating license in an Agreement State is terminated and the site transferred to the United States for long-term care. All funds collected by the State for long-term monitoring and maintenance will be transferred to the United States. This requirement has already been codified in Part 150 and is not part of this rulemaking.
 8. Title I covers designated inactive uranium mill tailings sites. Title II covers sites licensed as of January 1, 1978 and new uranium and thorium mill tailings sites.

Closure License

Licensees at the Title II sites also need the framework in place for the long-term care of sites. [The long-term care programs to be conducted by the DOE or States need to be considered in closure and decommissioning plans.] Ten of the 19 conventional mills licensed by NRC have made corporate decisions to no longer use the sites or keep them in standby condition. They plan to decommission them and are seeking license termination. Activities at these 10 sites are in various stages of design, planning and decommissioning.

V. The Surveillance and Maintenance Plan

DOE, or the appropriate State, will submit a site specific surveillance and maintenance plan to the NRC after site closure has been satisfactorily completed. DOE, or the appropriate State, will be responsible for preparing the SMP since this document will clearly define their responsibilities under the general license. The NRC will review the SMP and supporting documentation

We don't contemplate the need for long-term care other than the once-a-year inspection described in the GEIS. We won't terminate the license until all requirements are met, including the one that says "no ongoing maintenance".

event a 30-day exception is made under 88c of MSLR. These requirements will be clearly known and will be specified by NRC, not the licensee.

to ensure that the ownership of land and materials is adequately documented, and that the proposed long-term care program provides the necessary conditions for that site. As discussed previously, the SMP for Title I sites will allow a two phased approach as provided in the Uranium Mill Tailings Remedial Action Amendments Act of 1988. The Act will allow DOE to do all remedial actions, other than groundwater restoration, for the first phase of closure and licensing. The first phase includes any performance or design features necessary to satisfy groundwater protection standards, except for groundwater restoration. The second phase, which can go on for many years, will deal with existing groundwater restoration. When groundwater restoration is completed, the SMP will be appropriately amended.

The DOE has developed a "Guidance for UNTRA Project Surveillance and Maintenance" document issued in January 1986. Copies of this document are available from the U.S. Department of Energy, UNTRA Project Office, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87115. This document, which was developed with NRC staff coordination, provides detailed generic guidance for what information should be considered in designing a site specific SMP for Title I sites. This guidance is generally applicable to the Title II sites. However, the guidance document includes additional information and recommendations for which the applicability must be evaluated on a site specific basis for Title II sites. The NRC staff is considering the preparation of an NRC guidance document to clarify these items.

The document addresses five primary activities. These activities, which are discussed in the following paragraphs, are:

1. Definition and characterization of final site conditions.
2. Site inspections.
3. Groundwater monitoring.
4. Aerial photography.
5. Long-term care and contingency (or emergency) repair.

DOE indicated that final site conditions should be defined and characterized prior to the completion of remedial actions at a site. As-built

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are available
for NRC
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drawings should be compiled, a final topographic survey should be performed, a vicinity map should be prepared, and ground and aerial photographs should be taken. Survey monuments, site markers, and signs should be established. If the site specific SMP specifies that ground-water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

1 to 2 day

DOE describes three types of inspections: Phase I, Phase II, and contingency inspections. Annually scheduled phase I inspections would be conducted by a small team to identify any changes in conditions that may affect design integrity. Phase II inspections would be unscheduled and dependent upon potential problems identified during a Phase I inspection. Team members of a Phase II inspection should be specialists in the potential problem areas (e.g., geotechnical engineer for settlement). Contingency inspections would also be unscheduled and occur when information has been received that indicates that site integrity has been, or may be, threatened by natural events (e.g., severe earthquake) or other means.

The need to monitor groundwater conditions should be determined on a site specific basis. If it is determined that groundwater monitoring is required for the long-term care at the site, then it should be conducted in two phases, screening monitoring and evaluative monitoring. Screening monitoring would be designed to detect changes in groundwater quality attributable to the tailings. If a significant change is apparent, evaluative monitoring should be initiated. Evaluative monitoring will be more extensive and will quantify the rate and magnitude of the change of conditions. When EPA finalizes the groundwater protection standards, modifications may be necessary. See the discussion on the Uranium Mill Tailings Remedial Action Amendments Act of 1988 for more details.

Initial surveillances should include the acquisition and interpretation of aerial photography. The principal purposes of aerial photography are to aid inspectors in the field and to provide a permanent, visual record of site conditions. Color infrared stereo photos, high oblique prints, and low oblique, natural color photographs should be taken at the completion of

remedial action. Follow-up aerial photography would only be done if the Phase I or Phase II inspections identified a need for this.

Long-term care such as grass mowing or fence repair may be desirable at some sites. Extreme natural events or purposeful intrusion may occur at a site which would require immediate emergency measures. When compared with contingency (or emergency) repair, long-term care will be less costly, smaller in scale, and more frequent in occurrence. Although contingency repair costs may be substantial, they are unlikely to be needed.

When dealing with a Title II site, Appendix A criterion 10 requires the current licensee to pay a minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance. The minimum charge was based on an annual inspection by the governmental agency retaining custody of the site to confirm the integrity of the stabilized tailings and to determine the need, if any, for maintenance and/or monitoring. This charge is not intended to cover the cost of contingency (emergency) repairs. Because the tailings and wastes should be disposed of without the need for any active maintenance, the annual inspection should be completed in 1-2 days per site. The basis for the minimum charge and the annual inspection is discussed in detail in the Final Generic Environmental Impact Statement on uranium milling (NUREG-0706)¹. It should be noted that the SMP developed by the long-term care agency will not affect the long-term care charge paid by the current licensee (the SMP may reflect site specific additional items, but will not affect the charge to the current licensee). When maintenance type activities, such as grass mowing, are deemed necessary to meet the Appendix A closure standards, such activities can only be imposed

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¹Copies of NUREG0706 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC.

by exemption under the Atomic Energy Act, Section 84(c). In such cases the criterion 10 minimum charge must be increased to provide for this maintenance.

VI. Future Uses of the Disposal Site

UNTRCA provides for potential future uses of the disposal site. For a Title I site, it provides that the Secretary of the Interior, with the concurrence of both the Secretary of Energy and the NRC, may dispose of any subsurface mineral rights. If this occurs, the NRC will issue a specific license to the Secretary of the Interior to assure that the tailings are not disturbed, or if disturbed are restored to a safe and environmentally sound condition.

For a Title II site the same provisions as above apply with the following two differences. First, surface as well as subsurface estates may be available for use. Second, although the request to use these rights may be received from any person, if permission is granted, the person who transferred the land shall receive the right of first refusal with respect to this use of the land.

Environmental impacts would be evaluated prior to any action granting the use of surface or subsurface estates.

VII. Response to Issues for Comment

The Advance Notice of Proposed Rulemaking identified several areas of uncertainty and requested comments on the following topics:

1. DOE's ability to complete the Title I program considering the 1990 legal limit.
2. EPA's proposed amendments of 40 CFR Part 192 concerning groundwater protection for Title I sites.
3. Institutional matters associated with reclaimed sites on Indian land.

The NRC did not receive any comments specifically addressing these topics. However, much of the uncertainty was resolved with the passage of the Uranium Mill Tailings Remedial Action Amendments Act of 1988. See the section on this Act for more details.

VIII. Comments on the Advance Notice of Proposed Rulemaking

The Commission received six (6) letters commenting on the advance notice. Copies of those letters and an analysis of the comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L St., NW, Washington, DC. Comments were received from an environmental group, an industry representative, the Department of Energy, and from three States. From the six letters 15 individual comments have been analyzed. The most significant are summarized below.

NO
prior

There seemed to be some confusion by the industry commenter that this license and SMP might be involved during or closure activities and would have an impact on the private sector since the long-term licensee might, in essence, require the current licensee to prepare the SMP. Although licensing and preparation of the SMP is not part of the closure activities, we agree that the current licensee and the long-term licensee will need to coordinate during closure activities. The ~~general license and required SMP will only be required when closure activity is completed.~~ We have clarified in the rule that the long-term licensee will be responsible for preparing the SMP. We have also changed the phrase "no impact" to "no significant impact" since we believe that coordination between the long-term licensee and the current licensee is appropriate and desirable. This coordination will obviously involve some effort, but we do not believe the level of effort will be significant since it will be carried out along with other activities required to properly close the site and terminate the license to meet NRC requirements.

One commenter noted that the term "remedial action plan" may not be appropriate for Title II sites since 10 CFR Part 40 refers to a "closure plan." We agree and have made appropriate changes. Remedial action plans refer to Title I sites only.

Two commenters wanted to know the potential uses of a disposal site after reclamation or closure is completed. The NRC is not aware of any sites where a future use is specifically planned. One of the commenters listed several potential uses, such as agricultural, recreational, or deep subsurface mining. Because of the site specific nature of each site, any proposed use will be reviewed on a case-by-case basis.

The Department of Energy is concerned that the proposed rule would require an SMP at sites where contaminated material has been removed and, if applicable, groundwater cleanup achieved. We agree that an SMP (or a license) for these sites is not appropriate and never intended for this to be the case. We will add clarifying language. It should be noted, however, that the NRC would in no case concur with completion of remedial action unless the DOE had complied with the EPA cleanup standards at the processing site, even if the tailings were disposed elsewhere. DOE cleanup responsibilities at the processing site would not terminate, until NRC determines that such a site could be released for unrestricted use.

IX. Petition for Rulemaking

On December 5, 1980, the NRC received a petition for rulemaking submitted by the Sierra Club (PRM-40-23). An amendment to this petition was received by the NRC on March 21, 1983. The original petition requested that the NRC amend its regulations to license the possession of residual radioactive material at inactive storage sites (Title I). The petitioner proposed that the NRC take the following regulatory action to ensure that public health and safety and the environment is adequately protected from the hazards associated with residual radioactive material.

1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.
2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.

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1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.
2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.

3. Or alternatively, conduct a rulemaking to determine whether a licensing exemption of these sites or the byproduct material derived from the sites constitutes an unreasonable risk to public health and safety.

In the 1983 amendment, the petitioner requested that, in the event that NRC denied the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requested that the NRC ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with residual radioactive materials.

Whether the original petition is granted or not, the petitioner also requested that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act (42 U.S.C. 2111), comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.). In the alternative, the petitioner suggested that NRC extend the coverage of the requirements in 10 CFR Part 40, Appendix A, which are now applicable only to licensed byproduct material, to residual radioactive material not subject to licensing. In addition, the petitioner requested that NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

One of the purposes of this proposed rulemaking is to provide a licensing procedure for long-term care of inactive sites. Although this is not what the petitioner requested, the end result directly addresses their concerns. Inactive sites will be licensed and will be managed to ensure their long-term integrity.

Another concern of the petitioner is that until DOE completes remedial actions, the residual radioactive material will be unregulated. While it is

true that the sites are unregulated in a legal sense, they have not been ignored by DOE. DOE has proceeded with its remedial action program. DOE's program is oriented toward completing high priority sites first. High priority sites are those generally closest to population centers. There are eight high priority sites. Reclamation activities at five are completed or underway and activities for the other three are in active planning or design phases. The activities for medium and low priority sites are in various phases - initial planning has been completed for all, and activities for several have progressed into the construction phase. In addition, DOE monitors the sites before and during remedial actions.

After the completion of this rulemaking, NRC will make a final determination on the issues raised by the petitioner and publish its findings in the Federal Register.

X. EPA Clean Air Act Activities

EPA is revisiting the regulation of radon and other radioactive effluents from uranium mill tailings as part of the voluntary remand of standards developed under Section 112 of the Clean Air Act (CAA). Under court negotiated schedules, EPA is expected to issue proposed regulations by the end of February 1989 and final regulations by the end of August 1989. The EPA proposed rules may include required closure timetables for existing Title II impoundments and new radon disposal standards for Title I and Title II sites. EPA closure timetables for licensed sites (i.e. Title II) could influence when sites would be eligible for long-term care under the general license in proposed 10 CFR 40.28. New disposal standards could result in EPA ordered modifications to reclaimed or closed impoundments at either Title I sites under proposed 10 CFR 40.27 or Title II sites under proposed 10 CFR 40.28. At a minimum, the dual responsibilities and regulatory programs will require coordination between the two agencies, and among States and the two agencies, depending on CAA delegations and State plans for long-term care of Title II sites. This potential for dual regulation is unavoidable under the existing laws and is a reality for licensed sites at the present time since licensees must obtain EPA approval of impoundments under 40 CFR Part 61 before coming to NRC or the States for approval.

EPA ordered activities could conflict with the terms of NRC's general license, particularly if extensive construction or modifications are required. In order to emphasize that NRC approval may also be necessary and that EPA's orders or other governmental actions do not supercede NRC's license, an explicit requirement to report governmentally directed activities to NRC has been added to the proposed rule. Because the CAA may not be the only law that could result in dual regulatory programs, the language in the proposed rule is general. However, the CAA is the only known dual situation. EPA directed activities are an additional circumstance which might require an NRC order and further evaluation of environmental and health and safety matters at the site. Under Section 122(c)(3), NRC has the authority to overrule application of EPA CAA actions, after notice and opportunity for comment, if they pose a threat to the public health and safety. Thus, NRC has a continuing responsibility under the CAA, the AEA, and UMTCA for the sites.

XI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The proposed rulemaking will establish general licenses for long-term care of uranium or thorium mill tailings sites by another Federal agency or State. The licensing action will be done after remedial action or site closure is completed, and would ensure that sites remain in good condition. If unexpected repairs are ever required, the long-term licensee will be responsible to make the necessary repairs. Therefore, the actions required under these regulations are preventative of adverse environmental impacts.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW, Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, Mail Stop NL/S-260. Telephone (301) 492-3877.

XII. Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0020.

XIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW, Washington, DC. Single copies of the draft analysis may be obtained from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NL/S-260.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

XIV. Regulatory Flexibility Certification Statement

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. This rule will apply only to a Federal agency or an appropriate State. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared.

XV. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

XVI. List of Subjects in 10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is proposing the following amendments to 10 CFR Part 40.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat.

954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§40.5, 40.9, 40.25(c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161c, 68 Stat. 950, as amended (42 U.S.C. 2201(c)).

2. Section 40.1 is revised to read as follows:

§40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, provide for long-term care, or deliver source, by-product materials, and residual radioactive material, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue these licenses. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in Part 110 of this chapter.)

(b) The regulations contained in this part are issued under the Atomic Energy Act of 1954, as amended (68 Stat. 919), Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and Titles I and II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901).

3. In §40.2a, paragraph (a) is revised to read as follows:

§40.2a Coverage of inactive tailings sites.

(e) Prior to the completion of the remedial action, the Commission will not require a license pursuant to 10 CFR Chapter I for possession of residual radioactive materials as defined in this Part that are located at a site where milling operations are no longer active, if the site is designated a processing site covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. After remedial actions are completed, the Commission will license the long-term care under the requirements set out in §40.27.

* * * * *

4. Section 40.3 is revised to read as follows:

§40.3 License requirements.

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term care, deliver byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

5. In §40.4, paragraph (t) is added to read as follows:

§40.4 Definitions.

* * * * *

(t) "Residual radioactive material" means: (1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and

other valuable constituents of the ores; and (2) other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

6. In §40.7, paragraph (f) is revised to read as follows:

§40.7 Employee protection.

* * * * *

(f) The general licenses provided in §§40.21, 40.22, 40.25, 40.27, and 40.28 are exempt from paragraph (e) of this section.

Section 40.20 is revised to read as follows:

§40.20 Types of licenses.

(a) Licenses for source material are of two types: general and specific. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

(b) Section 40.27 contains a general license applicable for custody and long-term care of residual radioactive material at uranium mill tailings disposal sites remediated under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

(c) Section 40.28 contains a general license applicable for custody and long-term care of byproduct material at uranium or thorium mill tailings disposal sites under Title II of the Uranium Mill Tailings Radiation Control Act of 1978.

WHOLE RULEMAKING?
PREMISE VIOLATES
THIS PROVISION
EXD

8. New §§40.27 and 40.28 are added to read as follows:

§40.27 General license for long-term care of DOE remedial action sites.

§ 275(a) does not include any standards. It requires EPA to promulgate standards.

promulgated under

(a) A general license is issued for the long-term care, to include monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions necessary to comply with the standards of section 275(a) of the Atomic Energy Act of 1954, for remediated uranium mill tailings sites under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available only to the Department of Energy, or another Federal agency designated by the President to provide long-term care. The purpose of this general license is to ensure that uranium mill tailings sites will be maintained in such a manner as to protect the public health, safety, and the environment after closure.

See specific comment on p. 10

(b) The general license in paragraph (a) of this section becomes effective when the Commission receives a suitable site specific long-term Surveillance and Maintenance Plan (SMP) that meets the requirements of this section. The Department of Energy, or other Federal agency designated by the President, shall submit the SMP within 120 days following Commission concurrence in the Secretary of Energy's determination of completion of remedial action at each site. The SMP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each SMP must include--

(1) A legal description of the site to be licensed, including documentation on whether land and interests are owned by the United States or an Indian tribe. If the site is on Indian land, then, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, the Indian tribe and any person holding any interest in the land shall execute a waiver releasing the United States of any liability or claim by the Tribe or person concerning or arising from the remedial action and holding the

United States harmless against any claim arising out of the performance of the remedial action;

We will be requiring that sections how a DOE complete and in accordance with ERM standards as part of our CMMMO review. Why do they have to make another submission?

(2) A detailed description of the final site conditions, including existing groundwater characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs. If the site has continuing aquifer restoration requirements, then the SMP may be completed in two phases. The first phase includes all items other than groundwater restoration. Groundwater monitoring, not associated with groundwater restoration, may still be required in this first phase. When groundwater restoration is completed, and the Commission has concurred, the licensee shall assess the need to modify the SMP and report results to the Commission. If the proposed modifications meet the requirements of this section, the SMP will be considered suitable to accommodate the second phase.

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission, frequency and extent of groundwater monitoring if required, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) A description of the criteria for follow-up inspections based on routine inspections or extreme natural events; and

(5) A description of the criteria for performing long-term care and emergency measures. This description must specify what constitutes long-term care and what requires emergency measures.

(c) The long-term care agency under the general license established by paragraph (a) of this section shall --

Care for
(1) ~~Maintain~~ the site in accordance with the provisions of the SMP;

Shaw
(2) Obtain concurrence from the Commission for all changes to the SMP;

(3) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(4) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the site, even if the action is required by another State or Federal agency.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the person acquiring the rights and the Secretary of Interior shall comply with section 104 (h) of the Uranium Mill Tailings Radiation Control Act of 1978. This section requires, among other things, that the Commission issue a license to the Secretary of the Interior to assure that the site remains in a safe and environmentally sound condition. The Commission shall respond to each licensing request on a site-by-site basis.

(e) The general license in paragraph (a) of this section is exempt from Parts 19, 20, and 21 of this Chapter, unless significant construction, actions, or repairs are required. In this case, the licensee shall submit and justify to the Commission the appropriate requirements from these Parts which will apply for this particular action.

§40.28 General license for long-term care of uranium or thorium byproduct tailings sites.

(a) A general license is issued for the long-term care, to include monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the

standards promulgated pursuant to section 84 of the Atomic Energy Act of 1954, for uranium or thorium mill tailings sites closed under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available to the Department of Energy, to another Federal agency designated by the President, or to the State where the site is located if the State exercises its option to acquire the site. The purpose of this general license is to ensure that uranium or thorium mill tailings sites will be maintained in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission receives a suitable site specific long-term Surveillance and Maintenance Plan (SMP) that meets the requirements of this section. The intended general licensee shall submit the SMP after the operating licensee has completed closure actions meeting the requirements of Appendix A of this Part or applicable Agreement State requirements. The SMP may incorporate by reference information contained in documents previously submitted to the Commission if the reference to the individual incorporated documents are clear and specific. Each SMP must include--

This would be unacceptable

(1) A legal description of the site to be licensed. *The description must show that the operating licensee has made all reasonable efforts to transfer title and any other interests in the land to the United States or a State. See Appendix A, Criterion 11 of this Part for more detailed criteria regarding land transfer;*

(2) A detailed description of the final site conditions, including existing groundwater characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs; *this information shall be provided in the current license in order to assist in the preparation of the*

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (see

How does DOE know when this has happened? He is the one who happens after we terminate the license

Go read Sec 832, AEA

Why is this DOE is responsible for closure requirements by the license holder

Can't see what DOE is doing. That's why some contractors are

Doesn't say how long after DOE could still have work under these a specific time frame should be specified

WOW! Our roots and what we're doing all license transfer? This can't be done. See 8820101 which was our old license that we never found

Appendix A, Criterion 12 of this Part for more details on inspections and reporting), frequency and extent of groundwater monitoring if required, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) A description of the criteria for follow-up inspections based on routine inspections or ~~extreme natural events~~ ^{and}

(5) A description of the criteria for ~~performing long-term~~ ^{for conducting long-term activities} ~~and~~ ^{instituting} emergency measures. This description must specify what constitutes ~~long-term~~ ^{long-term} ~~operations~~ ^{operations} and ~~requires~~ ^{requires} emergency measures.

(c) The long-term care agency who has a general license established by paragraph (a) of this section shall --

(1) ^{Who for?} Maintain the site in accordance with the provisions of the SMP;

(2) ~~Obtain concurrence from the Commission for all changes to the SMP;~~ ^{Notify the Commission prior to making any suitable}

(3) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(4) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the site, even if the action is required by another State or Federal agency.

(d) (1) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land. The application must demonstrate that--

why do we concur in changes to SMP if we don't concur on the original SMP?

Who else would have jurisdiction?
CAA (EPA)
500 0721
DOE/State could voluntarily do more than required by (Federal Regs)
2) We need to be approved it and what it is to DOE in our rec plan

(1) The proposed action does not endanger the public health, safety, welfare, or the environment;

(11) Whether the proposed action is of a temporary or permanent nature, the site would be maintained and/or restored to meet requirements in Appendix A of this Part for closed sites.

(2) A person receiving a specific license to use the surface or subsurface area of a site shall ensure that the site will be maintained or restored to conditions complying with Appendix A of this Part. On a case-by-case determination, the Commission may require financial arrangements to ensure that the licensed person is able to maintain the site undisturbed, or if disturbed is able to restore the site to a safe and environmentally sound condition.

(e) The general license in paragraph (a) of this section is exempt from Parts 19, 20, and 21 of this Chapter, unless significant construction, actions, or repairs are required. In this case, the license shall submit and justify to the Commission the appropriate requirements from these Parts which will apply for this particular action.

9. Appendix A, Criterion 12 is revised to read as follows:

Appendix A to Part 40 - Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content.

* * * * *

Criterion 12--The final disposition of tailings or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency retaining ultimate custody of the site where tailings, or wastes, are stored to confirm the integrity of the

stabilized tailings or waste systems and to determine the need, if any, for maintenance and/or monitoring. Results of the inspections for all the sites under the licensee's jurisdiction will be reported to the Commission annually within 90 days of the last site inspected in that calendar year. Any site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary site inspection report to be submitted within 60 days. The Commission may require more frequent site inspections if, on the basis of a site specific evaluation, such a need appears necessary due to the features of a particular tailings or waste disposal system. In this case, a preliminary inspection report is required to be submitted within 60 days following each inspection.

* * * * *

Dated at Rockville, Maryland this ___ day of _____, 1989.

For the Nuclear Regulatory Commission

Samuel J. Chilk,
Secretary of the Commission