

ARMR

The Trade Association of Radioactive Metal Recyclers

DOCKET NUMBER
PROPOSED RULE **PR 20**
(64FR 35090)



April 20, 1999

Mr. Robert A. Nelson
US Nuclear Regulatory Commission
NMSS/Mail Stop: 7F27
11555 Rockville Pike
Rockville, MD 20582-2738

Subject: Enhanced Participatory Rulemaking for the Clearance of Materials and Equipment with Low Residual Radioactivity

Dear Bob:

ARMR takes this opportunity to provide its observations and experience in Development of Clearance Standards. We hope you will include these in your forthcoming "Issues Paper" to the benefit of our community and this task as you move forward.

BRC Failures

Our understanding is that BRC had a lot of opponents in the environmental community but it was ultimately defeated in the congress where we had recently passed the LLWPA and amendments (1985) establishing the states' compacts for LLW Disposal. The view then being one of estimating approx. 30% loss of materials that were (needed?) to establish economies of disposal (i.e. pay for disposal operations). We need to understand that the environmental community is still there and needs to know the answer, "What is different than BRC" in any future rulemaking. We do not take exception that this or endeavors like this will go back to the congress ultimately, under "rule of law" as commissioner Diaz noted in the recent past.

EPA Discovery

While the EPA was conducting its Technical and Cost Analyses toward a Clearance Rule for Scrap Metal it held an early public meeting run by ELI (1996) that was really a "Polarizing" event. ELI with/without EPA counsel decided to invite the environmental community (paid for their transport in some cases) to our meeting to witness polarized presentations for and against metal recycle. The opponent, of all candidates was "Arjun Makhijani" who proceeded to tear down the basis of current Health-Physics programs with a, "Lets start over from the beginning" attitude! The proponent was a non-nuclear DOE manager (Stephan Warren) who had spent 18 mos. in a nuclear projects assignment at EM-40 to defend DOE's reasons for recycling contaminated metals.

The Indian tribes sang a "Song to Mother Earth" and Judith Johnsrud got into Epidemiology and the lack of data and testing (especially for women).

In the meanwhile, the EPA never said what it was trying to do, and in fact deferred saying anything because this effort was a "Grant" for ELI to perform and they would listen. I can say the Indian tribes were confused and so was I! Therefore, the only alternative was to oppose anything and everything!!

It would have been very nice of EPA to tell everyone it is time to consider the development of Standards for the protection of the public from residual radiation in some articles, principally metals. And now we propose to approach this issue from a risk perspective (in lieu of an instrument threshold measurement per se), a risk to the individual and the public and in this way we are to assure you the individual and the public will be safe from cause and effect, even if an unforeseen accident occurs. This approach would lend itself to certain international issues we face as a nation, and soon (this step by way of education is necessary and still needs to be done. It answers why we are doing this).

Industry Views

There is industry in general and there is the nuclear industry. This document speaks for the portion of the nuclear industry which is our ARMOR membership.

Industry (we) now see the need to prioritize our approach to the public in any future rulemaking and standards development. First of all, we need the industry in general on our side. This means the Scrap Recycle and the Steel Industry. To do this we need to resolve the long standing problems of fugitive sources and NORM materials plaguing the day-to-day operations of these entities. And, this is only to get to the talking stage. We are pleased to note some progress in these areas already.

At the same time, we need to bring along our industry (nuclear licensees) who experienced a great deal of discomfort in the EPA proceedings where Reg. Guide 1.86 was placed in jeopardy. These companies need to be assured of success or they too will abandon support for your effort. For example, we cannot say the first thing we are going to do is eliminate Reg. Guide 1.86.

It was critically important to our industry for the EPA studies to find Reg. Guide 1.86 adequately protective of the human health and the environment. But, the EPA gave no press to that because it has a bias favoring the environmental community (no matter the dictates of science).

We think also, in moving toward risk based regulation, we should not malign the measurement by instrument. The EPA made a big case of the setting of Reg. Guide 1.86 de facto (1974) as the then limits of detection. Even though limits may be risk based hereforward, it will be instruments that allow us to interpret the limits as risk is inferred and not actually measurable.

Approaches to the Public

There are at least four publics (stakeholders) we need to address:

- the nuclear industry.
- the affected industries (scrap recycle, steel, related manufacturing and products).
- the environmental community.
- the citizenry in general.

Each of these has a uniqueness in terms of approach. The citizenry has to be approached in a less complex matter-of-fact kind of way. To date we've thrown too many terms into the mix to achieve the statements we want to make. There has to be a simple representation of, "What is Safe" and what we reason is, "What is Radioactive and What is Not"? NRC individuals hasten to point out, "Everything is Radioactive" technically, including our bodies. We've tried that on the public already and it doesn't weigh-in well for us. Let's try something else.

We need to defuse the "Zero Tolerance" argument put forth by the environmentalists. Clearly any policy or regulation cannot be zero, but Director Mobley's approach on this from the Tenn. Div. of Rad. Health is interesting. Michael says, NORM is an example for representing to the public a balanced perspective of where radioactivity/exposure comes from. Everyone (public) is pretty much up on their knowledge of Radon. It is not strictly nuclear technology that produces radiation and exposure; therefore the "Zero Tolerance" argument toward future regulation is moot.

Public Education

Public education has been and continues to be a challenging mission.

There remains some important distinctions to make for radiological Science and the history of our Health-Physics programs. These programs have been successful in worker protection for the past 50 years.

Cancer incidence is the greatest fear of all. We take Cancer Head-On with the risk/dose assessments we are making for the rule development. Yet, we also know that regional studies (Savannah River Region 1997) for Incidence of Cancer do not vary widely from the national results and therefore Cancer today is not an outgrowth of nuclear technology. The public has to know this!!

We have to frown on any EPA moves to regulate nuclear technology in this arena any differently than other chemical hazard wrt cancer. For example, it does not make sense to regulate nuclear at 10^{-7} risk of cancer incidence if other hazards are regulated at 10^{-4} . It may be an emotional response, but it is also discriminatory to favor some environmentalists' passion for killing off this

important technology.

So we are saying, the yardstick for regulation of nuclear technology is the risk of cancer but in the general population, nuclear technology has had no impact thus far. Then, if it is going to be regulated on this basis, the regulation should not be discriminated from any other hazards thought to be cancer producing.

Ironically, radiation treatments in medicine are seen as a cure for cancer. And, we believe the public knows this!! The same is not true of chemical hazards.

Industry Participation

We could begin this segment with, "What Industry Needs" from a rulemaking. And, it would be accurate to state that industry needs a rule to its benefit (i.e. with the prospect of expansion of its markets). In contrast to EPA's concern about creating markets through rulemaking we within the industry look at the material and say it is there already. Also, the focus for the rulemaking always was to close regulatory gaps while insuring the public health and safety.

In our letter to EPA dated October 2, 1997, we cited three additional interests. They were:

- Good Science must prevail. There must be a contextual relationship from limits set via the rule to worker protection programs we have today and the achievements of radiobiology science.
- We need to define, "What is Radioactive and What is Not". There needs to be a consensus (or a rationale) of competent authority such as the NCRP, the ICRP (International) and the CRCPD before we approach our stakeholders.
- Implementation Plan with reasonable measurement limits. A plan that doesn't take recourse to expensive laboratory counting techniques as the only verification pathway.

Just as important however, Industry needs to participate in the formulation of the implementation plan for the rule. The implementation involves: isotope by isotope analysis, surface vs. volumetric restrictions, measurements/tables, disposition of Reg. Guide 1.86 and a myriad of other issues and considerations toward implementation. There is a lot of appeal for a rule that encompasses materials and equipment as well as metals. The implementation plan however, will be more complex.

We also point out that the risk/dose basis of regulation is a challenge of the numbers. There isn't that much difference between 5, 10 or 15 mr/yr. And, the public would have to accept that we can raise the limit for some isotopes while lowering others as compared to Reg. Guide 1.86. This is at best confusing. So there needs to be some creative work to sell risk/dose bases to the

April 20, 1999
Page 5 of 5

public. The whole difference will be: How we package this new information for public consumption and how can we present it as simply as possible.

In summary, this represents the information we have developed thus far. We hope it is useful to you. Please feel free to call upon me if I can add to the foregoing in any way. I can be reached at tel. 803/736-5588 or via e-mail: <Vloiselle@aol.com>

Sincerely,

A handwritten signature in cursive script, appearing to read "Val Loiselle".

Val Loiselle
Managing Director

ar99030

DISTRIBUTION

E. Brummett
F. Cameron
F. Cardile
G. Gnugnoli
P. Holahan
T. Huffert
K. Kalman
G. Kim
S. Klementowicz
R. Meck
T. O'Brien

April 26, 1999

NOTE TO: Attached List

FROM: Nelson 

SUBJECT: ARMR COMMENTS ON CLEARANCE RULEMAKING

The attached comments are forwarded for your information and consideration. I will send a short acknowledgment letter.

Attachment: As stated