

Uranium Watch

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DOCKETED
USNRC

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 27, 2010

U.S. Nuclear Regulatory Commission,
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff
Rulemaking.Comments@nrc.gov

RE: Docket ID NRC-2010-0075. Proposed Rule: 75 Fed. Reg. 43865-43876, July 27, 2010.

Below please find comments on the proposed rules related to Nuclear Regulatory Commission (NRC) Licenses, Certifications, and Approvals for Material Licensees, published in the Federal Register on July 27, 2010, 75 Fed. Reg. 43865-43876. My comments specifically relate to the licensing of uranium recovery facilities.

GENERAL COMMENTS

1. The proposed rules are not in the public interest. The rules narrowly define the intent of Congress with respect the purpose of the Atomic Energy Act (AEA). The intent of AEA goes beyond radiological health and safety and common defense and security. It also includes responsibility for environmental impacts from construction activities at the facility and environmental impacts associated with non-radiological contaminants. One of the purposes of having various conditions in a source materials license is to set parameters associated with environmental impacts that do not directly relate to radiological health and safety and common defense and security.

1. If a licensee is permitted to commence construction activities prior to the issuance of a license and prior to the issuance of the final Environmental Impact Statement, then the NRC will not have had a opportunity to review all possible environmental impacts of the proposed project and develop required mitigative measures and license conditions related to site construction. The NRC is responsible for environmental impacts of the licensed activities beyond just the control of licensed material. The NRC is responsible for the whole of the licensed activities and the site where the activities take place.

2. Allowing site construction activities prior to the issuance of a license would preempt the NEPA and licensing process. If activities take place, it assumes that the NRC or Agreement State will issue a license. Just the fact that a licensee or prospective license

has spent funds and committed resources for pre-licensing activities will put pressure on the NRC or Agreement State staff to issue a license or license amendment.

3. Many site construction activities have the potential to adversely impact cultural resources at the site. The NRC must have assurances that cultural resources at the site have been identified and, if necessary, mitigative measures have been taken. Such mitigative measures can include extensive cultural resource recovery operations. Often such mitigative measure are part of a source materials license; for example, in the source materials license for the White Mesa Uranium Mill (the only operating conventional uranium mill in the United States), which was licensed by the NRC in the late 1970s and is now licensed by the State of Utah.

4. NRC has other responsibilities besides radiological safety or security. NRC regulations must be protective of the public health and safety and the environment and include responsibilities for the impacts of non-radiological chemical constituents, protection of cultural resources, and mitigation of any environmental impacts associated with the facility, not just those associated with radiological health and safety and common defense and security. Facilities that are licensed by the NRC have the potential to impact endangered and threatened species through the release of non-radiological constituents into the environment. The NRC has a responsibility to identify and control such emissions.

5. The NRC does, in fact, license facilities, not just nuclear materials. By limiting NRC oversight to activities that have a reasonable nexus to radiological health and safety or common defense and security considerations, the NRC will limit its ability to oversee the whole of the licensed facility. Some of the site construction activities that might occur prior to the issuance of a license, such as erosion control, placement of roads and other structures, excavation, and fence building may impact the NRC staff's ability to control radiological and non-radiological aspects of a facility that will impact public health, safety, and the environment.

6. The NRC and Agreement States regulated uranium recovery facilities from 1975 to the present. There are a number of problems at many of those sites, which are the cause of continuing contamination of the air, ground and surface water, and soils, both on and off the sites. Public moneys are being spent to move 16 million tons of uranium mill tailings that were regulated by the NRC in Moab, Utah. Significant amounts of uranium, ammonia, and other radiological and non-radiological constituents continue to flow into the Colorado River from the former Atlas Minerals site. Yet, for the Moab site and other Title II sites, the NRC has never taken a hard look at the inadequacies of their regulations and the implementation of those regulations that caused these ongoing health, safety, and environmental problems. A study of the regulatory of those Title II sites would provide the NRC with technical and environmental data and information that would enhance its current regulatory program. The NRC needs such a study before it starts tweaking its definitions to further degrade its regulatory programs.

7. Any activities at facilities that the NRC will have control over, as part of their regulatory programs, should fall within the definition of "construction." Pre-licensing activities should be limited, and only occur when a licensee has applied for and received specific permission to conduct such activities.

8. If other construction activities can take place prior to the issuance of a license, then anyone challenging the proposed license action would not be able to obtain a stay of activities that have been placed outside the purview of the licensing action and NRC regulatory responsibility. And, since resources have already been committed, any judge would have to take those committed resources into consideration when making a determination if a stay is warranted. This would unjustly prejudice any legal decision related to both a request for a stay of a licensing action and the approval or denial of such an action.

9. A uranium recovery facility works as a whole and is evaluated as a whole operation in the NRC's technical and environmental reviews. To claim that some parts of the facility are in some way disconnected with the operation and can be commenced before a complete environmental and technical review has taken place is unreasonable and unrealistic. It is also contrary of the requirements of National Environmental Policy Act (NEPA). What is the point of requiring a NEPA review of a proposed licensing action, if a large part of the activities associated with the licensing action are now outside the definition of "construction" and would take place prior to the determination of the environmental impacts of the activities and the identification of appropriate mitigative measures?

10. If construction activities are permitted prior to the issuance of a license or license amendment, there would be no surety mechanisms in place to assure that the pre-construction impacts would be remediated if the licensing action is not approved or the licensee defaults in some way with respect their licensing, reclamation, and financial assurance responsibilities.

11. The NRC has not fairly identified and discussed the on-the-ground impacts at new or proposed NRC licensed facilities in the proposed rulemaking, the environmental impacts of the construction activities that would be authorized in a pre-construction environment.

12. The Staff Requirements Briefing, dated January 8, 2009, associated with this rulemaking states, in part: "The staff should budget resources to provide the Commission with a proposed rulemaking to revise 10 CFR 40.32 to determine whether limited work authorization provisions are appropriate for in-situ uranium facilities." However, this is not what this rulemaking is about. This rulemaking is about exempting many construction activities from the requirement of obtaining a limited work authorization for certain construction activities, because they would not be defined as construction activities. Also, this rulemaking goes beyond considerations of construction activities at in situ leach uranium recovery facilities. Therefore, the rulemaking is not in conformance with the directive of the Commission on December 11, 2008.

II. PROPOSED REGULATIONS

1. The proposed regulations fail to state whether the installation of monitoring wells, a significant component of uranium recovery facilities—including in situ leach facilities—is a "construction" activity or is exempted from the definition of "construction." I am sure that there are other types of construction activities that fall within a grey area between "construction" and exempted pre-construction activities.
2. The proposed regulations will cause regulatory confusion. For example, the new regulations exempt "excavation" from the definition of "construction." However, excavation of an area for the creation of a uranium mill tailings impoundment must take place in an approved location and under specific construction and quality assurance requirements. The same is true for other types of excavation activities, such as for evaporation ponds and wildlife ponds.
3. The NRC should delete the new definition of "commencement of construction" because it is not protective of the public health, safety, and the environment. It unreasonably limits the definition of what construction means at an NRC licensed facility.
4. The NRC should not amend its regulations to exempt the type of activities that are listed Section 30.4 definition of "Construction" at (3) to (8). In the definition of "construction," (3) to (8) should be deleted.
5. Number (9) should also be deleted, because the NRC has responsibility for activities at licensed uranium recovery facilities (and other types of licensed facilities) that go beyond radiological health and safety and common defense and security. Further, the term "reasonable nexus" is vague, and will, in the end cause a great deal of regulatory conflict and confusion.
5. Any changes in the regulations that allow a licensee to engage in any of the construction activities listed in at a uranium recovery facility

III. CONCLUSION

The proposed regulations will cause the public to lose confidence in the NRC's ability to fairly regulate the nuclear industry and protect the health and well being of the public and the environment. The new regulations tilt the NRC's decision making and oversight responsibilities toward the interests, needs, and desires of the nuclear industry. They serve to limit the public's ability to review and oversee the licensing actions taken by the NRC or an Agreement State. They serve to undercut the NEPA process and the ability of the public to comment on and receive appropriate consideration of their comments on applications, proposed licensing actions, and environmental analyses. They serve to prejudice any administrative or legal challenges to NRC licensing actions. And, they

serve to limit, rather than expand, the NRC's responsibility for the health and well being of the public and the environment.

Therefore, NRC regulations exempting certain types of construction activities from the definition of "construction" should not be promulgated as proposed in this rulemaking.

Thank you for the opportunity to comment.

Sincerely,

Sarah M. Fields
Program Director

Rulemaking Comments

From: Sarah Fields [sarah@uraniumwatch.org]
Sent: Monday, September 27, 2010 5:57 PM
To: Rulemaking Comments
Subject: NRC-2010-0075
Attachments: Comments_75FR43865.100927.pdf; ATT00002.txt

Dear Sir or Madam,

Attached are my comments on Docket ID NRC-2010-0075. Proposed Rule:
75 Fed. Reg. 43865-43876, July 27, 2010.

I also posted these comments on the federal regulations.gov website.

Thank you,

Sarah M. Fields
Uranium Watch

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From: Sarah Fields <sarah@uraniumwatch.org>

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