

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ROCKVILLE, MARYLAND

Date: SEPTEMBER 21, 1990

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Affirmation/Discussion and Vote (PUBLIC MEETING)

- a. Termination of Vermont Yankee Proceedings and Motions Related to ALAB-919
- b. Amendments to 10 CFR Part 40 for General Licenses for the Custody and Long-Term Care of Uranium and Thorium Mill Tailings Disposal Sites

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PUBLIC MEETING

* * *

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

FRIDAY, SEPTEMBER 21, 1990

The Commission met in open session, pursuant to notice, at 11:30 a.m., the Honorable KENNETH G. ROGERS, Acting Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

KENNETH C. ROGERS, Acting Chairman
JAMES R. CURTISS, Member of the Commission
FORREST J. REMICK, Member of the Commission

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

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P R O C E E D I N G S

(11:32 a.m.)

1
2
3 ACTING CHAIRMAN ROGERS: Good morning, ladies
4 and gentlemen. Chairman Carr will not be with us today,
5 he's on travel.

6 We have several affirmation items to come before
7 us. Would the Secretary please lead us through them?

8 MR. CHILK: Mr. Chairman, the first one is SECY
9 90-278, Termination of Vermont Yankee Proceedings and
10 Motions Related to ALAB-919.

11 The Commission, in this paper, is being asked to
12 approve the issuance of a Memorandum and Order, which
13 terminates the subject proceeding, and responds to certain
14 comments in the Intervenor's withdrawal statements and
15 certain essential aspects of the licensee's motion for
16 reconsideration and the Appeal Board's clarification
17 request.

18 Commissioners Rogers, Curtiss, and Remick have
19 approved the Memorandum and Order which is attached to the
20 SECY Memo of 17 September. Chairman Carr concurs in the
21 Order to dismiss the proceedings, but does not join in the
22 opinion. He would have dismissed the licensee's request
23 for reconsideration and the Appeal Board's request for
24 clarification as moot, since the Intervenor has withdrawn
25 from the proceeding.

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1 Would you please affirm your vote?

2 (Chorus of ayes.)

3 MR. CHILK: The second item, Mr. Chairman, is
4 SECY 90-282 entitled Amendments to 10 CFR Part 40 for
5 General Licenses for the Custody and Long-Term Care of
6 Uranium and Thorium Mill Tailings Disposal Sites.

7 In this paper, the Commission is being asked to
8 approve for publication in Federal Register Amendments to
9 10 CFR Part 40 for General Licenses for the Custody and
10 Long-Term Care of Uranium and Thorium Mill Tailings
11 Disposal Sites, the Rule to become effective 30 days after
12 publication. This rulemaking is required by the Uranium
13 Mill Tailings Radiation Control Act of 1978.

14 The Amendments provide for two new general
15 licenses which will correspond to License I pertaining to
16 inactive sites, and Title II pertaining to active sites,
17 under the Uranium Mill Tailings Radiation Control Act, and
18 will provide for the custody and long-term care for the
19 site in a manner as to protect the public health, safety
20 and the environment, after closure of the same.

21 All Commissioners have approved the publication
22 and the implementation of this final Rule, with the
23 changes that were attached to our September 6 memorandum.
24 Would you please affirm your vote?

25 (Chorus of ayes.)

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1 ACTING CHAIRMAN ROGERS: Are there any other
2 matters to come before us? Commissioners?

3 (No response.)

4 MR. CHILK: I have nothing, Mr. Chairman.

5 ACTING CHAIRMAN ROGERS: We stand adjourned.

6 (Whereupon, at 11:35 a.m., the meeting was
7 adjourned.)

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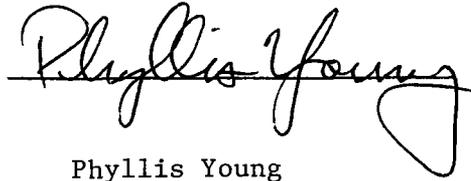
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TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: SEPTEMBER 21, 1990

were transcribed by me. I further certify that said transcription
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RULEMAKING ISSUE

(Affirmation)

August 10, 1990

SECY-90-282

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: AMENDMENTS TO 10 CFR PART 40 FOR GENERAL LICENSES FOR THE CUSTODY AND LONG-TERM CARE OF URANIUM AND THORIUM MILL TAILINGS DISPOSAL SITES

Purpose: To obtain approval to publish amendments to 10 CFR Part 40 to provide a procedure to license the custody and long-term care of uranium or thorium mill tailings disposal sites after completion of remedial actions or site closure.

Background: This rulemaking is required by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). UMTRCA requires that the NRC license DOE or a State for the long-term care of uranium or thorium mill tailings sites. NRC must license the long-term care of both inactive (Title I) and active or licensed sites (Title II). This rulemaking provides for the issuance of general licenses and establishes criteria and procedures to ensure that the long-term care licensee will care for uranium or thorium mill tailings disposal sites in such a manner as to protect the public health, safety, and the environment after closure. This rulemaking complements other UMTRCA required regulations for Title II sites which have been completed and that cover activities through closure. An Advance Notice of Proposed Rulemaking was issued on August 25, 1988, and a proposed rule was issued on February 6, 1990.

Discussion: In the Uranium Mill Tailings Radiation Control Act of 1978 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 license termination, in the hands of government.

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WHEN THE FINAL SRM IS MADE
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Contact:
M. Haisfield, RES
Ext. 23877

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 cared for by the DOE, or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMTRCA 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.

The 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 (inactive sites) and Title II (active sites) of UMTRCA, respectively. Although the requirements in § 40.27 and § 40.28 will differ somewhat due to the differences in Title I and Title II of the UMTRCA, the goal that the long-term care agency will care for the site in such a manner as to protect the public health, safety, and the environment after closure is the same.

These regulations deal only with uranium or thorium mill tailings sites after remedial actions or license termination have been completed. The general licenses will become effective for each individual Title I or Title II site upon NRC acceptance of an acceptable site Long-Term Surveillance Plan (LTSP) and either NRC concurrence in completion of remedial actions (Title I site) or termination of the Title II site license. The LTSP will be submitted by the Department of Energy for Title I sites, or the Department of Energy or a State for Title II sites. The LTSP will discuss ownership (whether Federal or State) and custody (agency responsible) of the disposal site, site conditions, the surveillance program, required follow-up inspections, and how and when emergency repairs and, if necessary planned maintenance, will be accomplished.

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 submit the LTSP, unless the State, at its option, decides to take custody of the site and be included in the general license. The authority to grant a long-term care license is reserved to the NRC (10 CFR Part 150.15a). States may be the long-term care agency but are not authorized to grant this type of license.

Both § 40.27 and § 40.28 allow for potential future uses of the disposal sites. As provided in UMTRCA, any future use would require a separate Commission license to assure that the site remains in, or is restored to, a safe and environmentally sound condition.

The rulemaking would issue a general license to governmental bodies for possession and long-term care of uranium or thorium mill tailings disposal sites after closure, pursuant to statute. Therefore, this rulemaking has little direct impact upon the private sector.

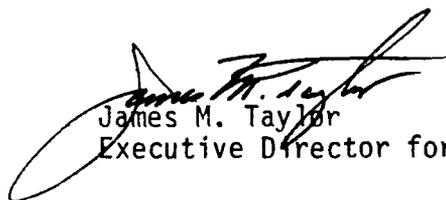
The Commission received six letters commenting on the proposed rule. They were received from two States, a company having uranium interests, and three Federal agencies (DOE, EPA, and DOI). As a result of these comments, we have made a number of clarifying changes to the Statement of Considerations and rule. The final rule, other than some relatively minor clarifications, is the same as the proposed rule. The comments and the detailed responses are in Enclosure 4.

In a related effort, the staff recently sent to the Commission SECY-90-268, which addressed EPA's proposed final ground-water protection standards for Title I sites. These final standards and the staff approach proposed in SECY-90-268 for dealing with alternate concentration limits (ACL's) will complete the regulatory framework for NRC concurrence in DOE's remedial actions at the Title I sites. Promulgation of the final rule contained in this paper will complement the existing regulations for mill tailings and provide the institutional control mechanism to help assure that the objectives of UMTRCA are met.

Recommendation: That the Commission:

- (1) Approve for publication in the Federal Register the amendments to 10 CFR Part 40 for general licenses for the custody and long-term care of uranium and thorium mill tailings disposal sites (see Enclosure 1).
- (2) Note:
 - (a) That the rulemaking in Enclosure 1 will be published in the Federal Register and become effective 30 days after publication.
 - (b) That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act.

- (c) That this rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act.
- (d) That the rule would not result in any activity that significantly affects the quality of the human environment. The environmental assessment forming the basis for this determination is contained in Enclosure 2, Environmental Assessment and Finding of No Significant Impact.
- (e) That compliance with CRGR charter requirements is not applicable for this rulemaking action as the rulemaking applies only to long-term care of remediated or closed uranium or thorium mill tailings disposal sites.
- (f) That a regulatory analysis, Enclosure 3, has been prepared for this rulemaking.
- (g) That comments on the proposed rule and their analysis is provided in Enclosure 4.
- (h) That the appropriate Congressional committees will be informed of this action by letters to those in Enclosure 5.
- (i) That a public announcement, Enclosure 6, will be issued by the Office of Public Affairs when the rulemaking is filed with the Office of Federal Register.
- (j) That OGC has reviewed the rulemaking package and has no legal objections.


James M. Taylor
Executive Director for Operations

Enclosures:

1. Federal Register Notice of Final Rulemaking
2. Environmental Assessment and Finding of No Significant Impact
3. Regulatory Analysis
4. Proposed Rule Comments and Analysis
5. Draft Congressional Letters
6. Draft Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Monday, August 27, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, August 20, 1990, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of August 27, 1990. Please refer to the Weekly Commission Schedule, when published, for a specific date and time.

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ENCLOSURE 1 - FINAL RULE NOTICE

NUCLEAR REGULATORY COMMISSION
10 CFR Part 40

RIN 3150-AC56

Custody and Long-Term Care
of Uranium and Thorium Mill Tailings Disposal Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by issuing general licenses that will 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.

EFFECTIVE DATE: (30 days after publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-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).
- V. The Long-Term Surveillance Plan (Title I and Title II).
- VI. Future Uses of the Disposal Site.
- VII. Comments of the Proposed Rulemaking.
- VIII. EPA Clean Air Act Activities.
- IX. Finding of No Significant Environmental Impact: Availability.
- X. Paperwork Reduction Act Statement.
- XI. Regulatory Analysis.
- XII. Regulatory Flexibility Certification Statement.
- XIII. Backfit Analysis.
- XIV. List of Subjects in 10 CFR Part 40.

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 State or Federal 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, the permanent disposal sites be cared for by the DOE or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMTRCA contains similar requirements for NRC licensing of presently active uranium or thorium mill tailings sites following their closure and license termination. These disposal 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 regulations will complement other UMTRCA 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). The proposed rule was issued on February 6, 1990 (55 FR 3970).

II. Proposed Action

The 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 UMTRCA, 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 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 to meet applicable closure standards. UMTRCA stipulates the Federal government (normally DOE) as the long-term care licensee, and thereby the owner, except in the case of a Title II disposal site where the State may elect to be the long-term care licensee. In lieu of any such State election, the Federal government will become the long-term care licensee. The NRC will receive a detailed Long-Term Surveillance Plan (LTSP) from DOE or an appropriate State which will discuss ownership (whether Federal or State), disposal site conditions, the surveillance program, required follow-up inspections, and how and when emergency repairs and, if necessary planned maintenance, will be accomplished. Unless the Commission is formally notified by the appropriate State, the DOE will submit the LTSP and will be the long-term care licensee. (See the section entitled "The Long-Term Surveillance Plan.") The general license will become effective for each individual Title I or Title II disposal site upon NRC acceptance of an LTSP that meets the requirements of the general license and either NRC concurrence in completion of remedial actions (Title I site) or termination of the Title II site license.

For disposal 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 disposal sites governed under the provisions of §40.28 (Title II sites), DOE, or another Federal agency, will prepare and

submit the LTSP, 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 LTSP. 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(b)(5)).

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 general license for long-term care covers activities after the operation and clean-up of the site has been completed. Under normal circumstances the long-term care licensee will spend a day or two at each disposal site each year to confirm that the site's conditions are as expected. The disposal site will comply with 40 CFR Part 192, Subparts A, B, and C (for Title I sites) and 10 CFR Part 40 Appendix A criteria (for Title II sites), which essentially eliminate direct radiation and air particulates and control radon releases within specified limits. Disposal 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 disposal site requires significant repairs, then the long-term care licensee must notify NRC and describe the necessary repairs. Since worker radiation protection and occupational exposure reporting may be necessary during such repair efforts, the long-term care licensee will identify the appropriate requirements of 10 CFR Parts 19, 20, and 21 to be applied. NRC may then impose appropriate portions of the above parts or regulations 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 10 CFR Part 40 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 care licensee, primarily the Department of Energy, will most likely have multiple disposal

sites, this rule will allow annual reports that cover all of these sites under their jurisdiction. Any disposal site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary 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 date of the annual inspection of the last site inspected.

Criterion 12 currently deals with Title II licensees. It is being amended to include Title I licensees. Provisions in §40.27 (Title I disposal sites) will reference Criterion 12 so that the same reporting requirements for Title II licensees will apply for Title I licensees.

There are some differences in requirements for mill tailings located on Indian lands. Where the disposal site is on Indian tribal lands, the tribes retain ownership. An exception is provided in Section 105(b) of UMTRCA, which states that in those cases where the residual radioactive material from processing sites on Indian land is relocated to a permanent disposal area not on Indian land, the DOE shall acquire title to the residual radioactive material and the disposal site. The NRC and DOE have generally agreed that disposal sites on Indian lands should be handled in the same manner as other Title I disposal sites, including conduct of surveillance 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 processing sites are on Indian lands. Three of these sites will also serve as disposal sites (the residual radioactive material from two of these locations will be consolidated at one disposal site).

For Title II disposal sites on Indian lands it is not clear who will be responsible for monitoring, maintenance, and emergency measures at the site. Currently, the Western Nuclear Sherwood Uranium Mill located in the State of Washington is the only site that falls into this category. UMTRCA provides that long-term surveillance will be done by the Federal government and that the licensee will be required to enter into arrangements with the Commission to

ensure this surveillance. However, UMTRCA was not explicit as to which Federal agency is responsible for the disposal site, and should this site ever require emergency measures, additional authorizations may be required. The basic obligations for this site have already been codified in 10 CFR 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 disposal sites on a case-by-case basis.

Both §40.27 and §40.28 allow for potential future uses of the disposal sites. As provided in UMTRCA, 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 rulemaking provides for 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. However, the staff recognizes that there may be cases where communication and sharing of information between the current licensee and the future long-term care licensee may be appropriate. This communication will allow the long-term care licensee to better prepare the Long-Term Surveillance Plan by having more knowledge of how site closure was accomplished.

III. Uranium Mill Tailings Remedial Action Amendments Act of 1988 (Amendments Act)

The Amendments Act was signed by the President on November 5, 1988, and provides among other things an extension of the UMTRCA Title I program. It allows the Department of Energy until September 30, 1994 (previously 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 ground water restoration activities is extended without limitation. However, to meet the current proposed Environmental Protection Agency (EPA) ground water standard, compliance with the ground water protection provisions at the disposal site would still need to be accomplished by the 1994 date.

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

As a result of the Amendments Act, the NRC is planning to allow licensing of Title I disposal sites, where the tailings are not being moved, to occur in two steps, if needed. The first step would allow DOE, if necessary, to do all remedial actions, which include complying with the ground water protection standards addressing the design and performance at the disposal site for closure and licensing. The Amendments Act requires this to be completed prior to September 1994. The second step which can go on for many more years, would deal with existing ground water restoration. When ground water restoration is completed, the Long-Term Surveillance Plan would be appropriately amended. 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 Amendments Act itself did not address the potential delay of licensing Title I disposal sites due to the ground water provisions in EPA's proposed standards requiring monitoring after NRC has concurred in completion of remedial action. NRC's options ranged from a case-by-case use of EPA's supplemental standards provisions to exempt such disposal sites entirely from performance monitoring to the inflexible consequence of delaying all such licensing until completion of the ground water performance monitoring program. Such a delay could extend for up to 30 years or more. Based on interaction with other Federal agencies and the Congressional legislative history, the NRC

staff has selected the two step 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. Because 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 disposal 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 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.

The portion of the EPA standards dealing with ground water requirements has been remanded by court action, and is currently being finalized by EPA (see the previous section for more details). DOE continues to perform remedial action at the inactive processing sites in accordance with NRC's concurrence with the remedial action approach. Delaying implementation of the remedial action program would be inconsistent with Congress' intent of timely completion of the program. Modifications of disposal sites after completion of the remedial action to comply with EPA's final ground water protection standards may be unnecessarily complicated and expensive and may not yield commensurate benefits in terms of human and environmental protection. Therefore, the Commission believes that sites where remedial action has been essentially completed prior to EPA's promulgation of final ground water standards will not be impacted by the final ground water standards. Although additional effort may be appropriate to assess and cleanup contaminated ground water at these sites, the existing designs of the disposal sites should be considered sufficient to provide long-term protection against future ground water contamination. NRC does not view UMTRCA as requiring the reopening of those sites that have been substantially completed when NRC concurred with the selection of remedial action in accordance with applicable EPA standards, 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 remedial action (which includes 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 of must be in Federal custody (except for disposal sites on Indian lands) to provide for long-term Federal control, at Federal expense.

NRC concurrence in the DOE determination that remedial action at the processing site has been accomplished in accordance with the approved plan may be accomplished in two steps where residual radioactive material is not being moved. The Uranium Mill Tailings Remedial Action Amendments Act of 1988 allows for a two step approach for Title I disposal sites. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The second step, which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the LTSP will be appropriately amended. For sites that are being moved, licensing will occur in one step. There is no ground water restoration at the disposal site and the cleaned up processing site is not licensed. See the earlier discussion on this law for more details.

The third phase is the licensing phase. The general license is effective following (1) NRC concurrence in the DOE determination that the disposal site has been properly reclaimed and (2) the formal acceptance by NRC of a suitable Long-Term Surveillance Plan. NRC concurrence with DOE's performance of the remediation indicates that DOE has demonstrated that the remedial action complies with the provisions of the EPA standards in 40 CFR Part 192, Subparts A, B, and C. This NRC concurrence may be completed in two steps as discussed above and in the section on the Act. There is no termination date for the general license.

Public involvement has been and will continue to be provided through DOE's overall remedial action program for Title I sites and NRC's licensing program for Title II sites. The local public will have an opportunity to comment on the remedial action or closure plans proposed and implemented by DOE or the Title II licensee and to raise concerns regarding final stabilization and the degree of protection achieved. NRC fully endorses State and public input in all stages of the program, especially in the planning stages of remedial action

when such input can be most effective in identifying and resolving issues affecting long-term care. At the time the LTSP is submitted, the NRC will consider the need for a public meeting in response to requests and public concerns. Therefore, NRC encourages State and public participation early in the remedial action and closure process and will provide additional opportunities, as needed, later in the process.

The final phase of the program is surveillance and monitoring and begins after NRC accepts the LTSP. In this phase DOE and NRC periodically inspect the disposal site to ensure its integrity. The Long-Term Surveillance 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 necessary, a determination will be made on a site specific basis regarding the need for additional National Environmental Policy Act (NEPA) actions, and health and safety considerations from Parts 19, 20, and 21.

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 on October 7, 1983 (48 FR 45946).

Title II processing 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.

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. Once the future long-term care licensee has submitted a suitable LTSP, the general license takes effect when either NRC terminates the current specific license or when NRC concurs with an Agreement State's termination of the current specific license. This rulemaking provides the Commission with two options to maintain control over disposal sites in the unexpected situation when: (1) an acceptable LTSP has not been submitted; (2) the current specific license is ready to be terminated; (3) NRC had determined that the disposal site has been closed in accordance with applicable standards; and (4) disposal site custody has been transferred to the long-term care licensee. The Commission could delay termination of the specific license until an acceptable LTSP is submitted or issue an order requiring surveillance by the custodian of the disposal site, who will become the long-term care licensee under the general license. The Commission considers either of these actions to be sufficient to ensure that the disposal site will be under surveillance and control during the transition period from the specific to the general license. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. In such cases, the prime option would be to issue appropriate orders. The Commission, however, does not want to preclude the option of not terminating the specific license if this should be appropriate for a relatively short period.

The general license approach 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 disposal 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 disposal site.
3. Potential future uses of a Title I disposal site are limited to subsurface rights, whereas, a Title II disposal site could also

potentially allow the usage of surface rights. (See the section entitled "Future Uses of the Disposal Site").

4. 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 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. (See the section entitled "The Long-Term Surveillance Plan", Title II, for additional details).
5. The determination that remedial action at Title I disposal sites has been completed may be done in two steps, whereas the determination of acceptable closure for Title II sites will be done only once before license termination.
6. There is an additional Title II requirement when a license in an Agreement State is terminated and the disposal site transferred to the United States for long-term care. All funds collected by the State for long-term surveillance will be transferred to the United States. This requirement has already been codified in Part 150 and is not part of this rulemaking.
7. 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.

Twenty-seven of the 29 conventional mills licensed by NRC or Agreement Sites are not currently operating. Most of these have no plans to restart operations, and closure activities have either been started or are in planning.

V. The Long-Term Surveillance Plan (Title I and Title II)

DOE, or the appropriate State, will submit a disposal site Long-Term Surveillance Plan to the NRC to coincide with completion of remedial actions (Title I) or license termination (Title II). DOE, or the appropriate State, will be responsible for preparing the LTSP since this document will clearly define their responsibilities under the general license. As discussed previously, the LTSP for Title I disposal sites will allow a two step approach as provided in the Uranium Mill Tailings Remedial Action Amendments Act of 1988. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The first step includes any performance or design features necessary to satisfy ground water protection standards, except for ground water restoration. The second step which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the LTSP will be appropriately modified.

Title I

The DOE has developed a "Guidance for UMTRA Project Surveillance and Maintenance" document issued in January 1986. Copies of this document are available from the U.S. Department of Energy, UMTRA 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 an LTSP for Title I disposal sites.

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

1. Definition and characterization of final disposal site conditions.
2. Disposal site inspections.
3. Ground water monitoring, if necessary.
4. Aerial photography.
5. Contingency (or emergency) repair, and planned maintenance if necessary.

DOE indicated that final disposal site conditions should be defined and characterized prior to the completion of remedial actions at a site. As-built 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 disposal site LTSP specifies that ground water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

DOE describes three types of disposal site inspections: Phase I, Phase II and contingency inspections. Annually scheduled 1 to 2-day 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 ground water conditions should be determined on a site specific basis. If it is determined that ground water monitoring is required for the long-term care at the disposal site, then it should be conducted in two phases, screening monitoring and evaluative monitoring. Screening monitoring will be designed to detect changes in ground water 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 ground water protection standards, modifications may be necessary. See the discussion on the Uranium Mill Tailings Remedial Action Amendments Act of 1988 for more details.

Aerial photographs of the Title I disposal sites should be taken immediately upon completion of the construction and after the permanent surveillance features have been installed. The photographs will be used to prepare the final topographic map and as-built drawings and will be kept in the

permanent site file for future reference, should a problem develop at the site. In the unlikely event that a problem (such as erosion) should occur, the photographs provide baseline information about site conditions. New aerial photographs would be taken if it becomes necessary to monitor a problem over a long period of time.

The LTSP should also describe the procedures the long-term licensee would follow if contingency or emergency repairs were needed at the disposal site due to extreme natural events or purposeful intrusion.

The conduct of custodial activities such as grass mowing or fence repair are not precluded. If the long-term care licensee desires to conduct this type of custodial activity (termed "planned maintenance" in the DOE guidance document), the activities should be described in the LTSP. However, it should be noted that planned maintenance of this type cannot be relied upon to ensure compliance with the EPA standards.

Title II

Much of the guidance described for Title I disposal sites can be applied to the Title II disposal sites. However, the DOE guidance document includes additional information and recommendations for which the applicability must be evaluated on a site specific basis for Title II disposal sites. Specific requirements for Title II sites are addressed in Appendix A of 10 CFR Part 40. For Title II sites, criterion 10 of Appendix A requires the existing 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. The actual amount of this charge will be set based on a site specific evaluation, which should be included as part of the existing licensee's reclamation plan for the site. 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 to 2 days per site. Post-closure maintenance activities that are relied upon to comply with Appendix A

closure standards can only be authorized by considerations of alternatives under Section 84(c) of the Atomic Energy Act of 1954, as amended. In such cases, the minimum charge for long-term surveillance to the existing licensee will be increased accordingly to provide for this maintenance. 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.

The custodial agency will prepare an LTSP for each disposal site using input from the existing licensee's reclamation plan, including the evaluation of long-term surveillance needs. Thus, important site information will be transferred from the existing licensee to the custodial agency. The existing licensee, however, will not be required to prepare the LTSP. In addition the LTSP will not affect the long-term surveillance charge paid by the existing licensee (the LTSP may also reflect additional site-specific activities which are not to be reflected in the long-term care charge, but are voluntarily committed to by the custodial agency).

VI. Future Uses of the Disposal Site

UMTRCA provides for potential future uses of the disposal site. For a Title I disposal 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

¹Copies of NUREG-0706 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.

disturbed, or if disturbed are restored to a safe and environmentally sound condition. At a Title I processing site, when tailings are moved, once the surface remedial actions are completed, surface rights will be available as long as the use does not impede future ground water restoration activities.

For a Title II disposal 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 to the Federal or State Government shall receive the right of first refusal with respect to this use of the land.

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

VII. Comments on the Proposed Rulemaking

The Commission received six (6) letters commenting on the proposed rule. Copies of these 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 Street, NW. (Lower Level), Washington, DC. Comments were received from two States, a company having uranium interests, and three Federal Agencies (the Department of Energy, the Environmental Protection Agency, and the Department of the Interior). The most significant comments are summarized below.

There was concern that a current licensee may be placed in a position of having to delay final closure and turnover of its disposal site to the Federal government if an acceptable Long-Term Surveillance Plan has not been submitted. This could cause increased costs to the licensee and thereby have a significant impact on the private sector.

The proposed rule package discussed two options available to the Commission to maintain regulatory control of the disposal site in the above situation. The NRC could delay termination of the license or could issue specific orders to the intended custodial agency. We agree with the commenter that an indefinite delay in terminating the license could increase the impacts

to an existing licensee. Therefore, we have clarified the rule to acknowledge that if significant financial impacts are anticipated due to lack of action on the custodial agency's part, issuing an order would be our prime option. However, the Commission wants to retain the option of not terminating the existing license, if this might be appropriate for a relatively short period.

A State commenter was concerned that the rule does not provide for explicit State concurrence in the LTSP prepared by the Federal government.

The proposed rule did not provide for specific State concurrence in the NRC licensing actions, because the State has no regulatory authority under the Atomic Energy Act during the long-term care period. The State, as a member of the general public, may comment on any action to be taken by the NRC. We would like to note that, for the Title II sites, the State, at its option, can be the custodial governmental agent and, therefore, become the responsible party to prepare and implement the LTSP under the general license issued by the NRC.

If significant environmental consequences occur at either Title I or Title II disposal sites in the future, the failure will not likely be as a result of the LTSP, but will most likely be as a result of inadequate design or construction. The States have been and will continue to be integrally involved in the design and construction phase of remedial action or closure. The commenter appears to over estimate the purpose of the LTSP which is the surveillance of the reclaimed or closed site, not the performance of significant maintenance work. The performance of significant work at licensed disposal sites under this regulation requires specific authorization from the NRC.

The Department of Energy indicated that the proposed rule was not clear regarding how the two step licensing process (Title I only) works in relationship to processing sites that are stabilized in place versus those that are relocated.

There will be a difference in how the two step licensing approach will be used depending upon whether the site has been stabilized in place or moved. The two step approach, as it will apply for this LTSP and licensing, will only

be used for sites stabilized in place. For sites that are moved there will be no ground water restoration at the new site and the old site will not have an LTSP or license associated with it. When DOE moves a site, the original processing site will be cleaned-up to meet EPA standards for unrestricted use. When this is the case NRC will not license these processing sites.

For sites stabilized in place and requiring additional ground water restoration, the LTSP will cover all the elements identified in the rule, except for detailed ground water restoration actions. The LTSP may still require ground water monitoring to insure that actions taken for ground water restoration are not affecting the integrity of the stabilized pile. For example, if ground water restoration activities are impacting leaching through the pile, monitoring under the LTSP should be able to identify this and require any necessary corrective actions.

In summary, regardless of whether residual radioactive material is relocated or not, the custodial agency will be an NRC general licensee at the disposal site only. If ground water restoration at the processing site is necessary when the material is relocated, this will have no impact on the general license for the disposal site. If ground water restoration is necessary for a site stabilized in place, then licensing will be done in two steps.

DOE requested that reporting requirements for Title I sites be comparable to those for Title II sites -- 10 CFR Part 40 Appendix A, Criterion 12. The wording in the proposed rule provided DOE with flexibility in developing reporting requirements for Title I sites. However, since DOE requested this change it has been added to the final rule.

In the Advance Notice of Proposed Rulemaking, the Commission indicated that before the general license could become effective at a disposal site the NRC must "receive" an LTSP. In the proposed rule, the wording was changed to show that the Commission must "accept" the LTSP. DOE did not support this change. NRC has made this change to provide a better level of control over the licensing process. If the NRC receives an acceptable LTSP, the long-term care licensee would not be impacted in any way. If an unacceptable LTSP is

received, this provision provides the NRC an opportunity to work with the long-term care licensee to correct the deficiencies prior to licensing.

NRC adopted a number of DOE recommendations that provide additional clarity in the notice and rule. These changes included, for example, clarifying when the word "site" specifically refers to a disposal or processing site, providing additional information for Title I sites on Indian lands, using the term "remedial action" for Title I sites, noting in the rule that there is no termination date to the general licenses, clarifying the use of aerial photographs, and other wording changes that provided more specific information.

VIII. EPA Clean Air Act Activities

EPA has published new air effluent regulations for 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) (54 FR 51654, December 15, 1989). The EPA regulations include a radon emission standard that would apply to both Title I and Title II disposal sites after closure that must be confirmed by measurement. Other NRC and EPA regulations are design standards. Once measurements confirm that the site meets CAA standards and long-term stabilization has been completed, the tailings are no longer subject to EPA regulations under the CAA standards. Prior to closure, it is entirely possible that the CAA standards could result in EPA ordered modifications to sites that already meet current design standards. The potential for conflicting EPA and NRC/Agreement State regulatory programs prior to the long-term care period, will require close coordination between the two agencies, and with States, depending on CAA delegations.

IX. 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 is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule establishes general licenses for long-term

care of uranium or thorium mill tailings disposal 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 disposal sites remain in good condition. If unexpected repairs are ever required, the long-term care licensee will be responsible to make the necessary repairs. The Commission will evaluate at the time such action is deemed necessary whether there is a need to prepare a separate environmental assessment.

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. (Lower Level), 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 NLS-260. Telephone (301) 492-3877.

X. 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.

XI. Regulatory Analysis

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

XII. 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 does 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. Although small entities may be requested to consult with government agencies in developing LTSPs, effort associated with such consultation is required under the criteria in Appendix A to 10 CFR Part 40, which were previously promulgated by the Commission. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared.

XIII. Backfit Analysis

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

XIV. List of Subjects in 10 CFR Part 40

Criminal penalty, government contracts, Hazardous materials-transportation, Nuclear materials, 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. 552 and 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is adopting 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(o)).

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, or deliver source and byproduct materials, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue these licenses. These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. 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.

(a) 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 covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. 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 of sites, where residual radioactive materials are disposed, 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 or dispose of 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, the definition Residual radioactive material is added in to read as follows:

§40.4 Definitions.

* * * * *

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, as amended.

6. In §40.7, paragraph (i) 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.

7. Section 40.20 is revised to read as follows:

§40.20 Types of licenses.

(a) Licenses for source material and byproduct material are of two types: general and specific. Licenses for residual radioactive material

are general licenses. 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, as amended.

(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, as amended.

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

§40.27 General license for long-term care of residual radioactive material disposal sites.

(a) A general license is issued for the long-term care, including monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions necessary to comply with the standards promulgated under section 275(a) of the Atomic Energy Act of 1954, as amended, for disposal 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 disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after remedial action has been completed.

(b) The general license in paragraph (a) of this section becomes effective when the Commission accepts a site Long-Term Surveillance Plan (LTSP) that meets the requirements of this section, and when the

Commission concurs with the Department of Energy's determination of completion of remedial action at each disposal site. There is no termination of this general license. The LTSP 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 LTSP must include--

(1) A legal description of the disposal 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, as amended, 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;

(2) A detailed description, which can be in the form of a reference, of the final disposal site conditions, including existing ground water characterization and any necessary ground water protection activities or strategies. 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 disposal site has continuing aquifer restoration requirements, then the licensing process will be completed in two steps. The first step includes all items other than ground water restoration. Ground water monitoring, which would be addressed in the LTSP, may still be required in this first step to assess performance of the tailings disposal units. When the Commission concurs with the completion of ground water restoration, the licensee shall assess the need to modify the LTSP and report results to the Commission. If the proposed modifications meet the requirements of this section, the LTSP will be considered suitable to accommodate the second step.

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

specified in Appendix A, criterion 12 of this Part), frequency and extent of ground water monitoring if required, appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

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

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

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

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

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, 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 Commission shall grant a license permitting use of the land if it finds that the use will

not disturb the residual radioactive materials or that the residual radioactive materials will be restored to a safe and environmentally sound condition if they are disturbed by the use.

(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. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these Parts apply for the actions and comply with the appropriate requirements.

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

(a) A general license is issued for the long-term care, including monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the standards in this part for uranium or thorium mill tailings sites closed under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The licensee will be the Department of Energy, another Federal agency designated by the President, or a State where the disposal site is located. The purpose of this general license is to ensure that uranium and thorium mill tailings disposal sites will be cared for 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 terminates, or concurs in an Agreement State's termination of, the current specific license and a site Long-Term Surveillance Plan (LTSP) meeting the requirements of this section has been accepted by the Commission. There is no termination of this general license. If the LTSP has not been formally received by the NRC prior to termination of the current specific license, the Commission may issue a specific order to the intended custodial agency to ensure continued control and surveillance of the disposal site to protect the public

health, safety, and the environment. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. The LTSP 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 LTSP must include--

(1) A legal description of the disposal site to be transferred (unless transfer is exempted under provisions of the Atomic Energy Act, §83(b)(1)(A)) and licensed;

(2) A detailed description, which can be in the form of a reference of the final disposal site conditions, including existing ground water 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;

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in Appendix A, Criterion 12 of this Part), frequency and extent of ground water monitoring if required, appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

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

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

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

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

(d) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, 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--

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

(2) 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; and

(3) Adequate financial arrangements are in place to ensure that the byproduct materials will not be disturbed, or if disturbed that the applicant 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. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these Parts apply for the actions and comply with the appropriate requirements.

(f) In cases where the Commission determines that transfer of title of land used for disposal of any byproduct materials to the United States or any appropriate State is not necessary to protect the public health, safety or welfare or to minimize or eliminate danger to life or property (Atomic Energy Act, §83(b)(1)(A)), the Commission will consider specific modifications of the custodial agency's LTSP provisions on a case-by-case basis.

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, residual radioactive material, 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 responsible for long-term care of the disposal site to confirm its integrity 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. On the basis of a site specific evaluation the Commission may require more frequent site inspections if necessary due to the features of a particular

disposal site. 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 _____, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE 2 - ENVIRONMENTAL ASSESSMENT
AND FINDING OF NO SIGNIFICANT IMPACT

Environmental Assessment for Rulemaking on the Custody
and Long-Term Care of Uranium and Thorium
Mill Tailings Disposal Sites
(UMTRCA Title I and Title II)

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 authorized by Congress to control this hazard is to require that the long-term care of the uranium or thorium mill tailings disposal site, after remedial action or closure have been completed, would reside in the hands of State or Federal government. This rulemaking will provide procedures and criteria to ensure that adequate surveillance and emergency repairs, if required, are performed by the Federal government or an appropriate State.

Coinciding with certification (by the Department of Energy (DOE) for Title I sites and by license termination for Title II sites) that the uranium or thorium mill tailings at the disposal site have been constructed to meet applicable closure standards, the Nuclear Regulatory Commission (NRC) would receive a detailed Long-Term Surveillance Plan (LTSP). The LTSP would discuss ownership of the site, site conditions, the surveillance program, required follow-up inspections, and how and when emergency repairs and, if necessary planned maintenance would be accomplished. This rulemaking will provide a general license that would become effective for each individual site upon NRC receipt of an LTSP that meets the requirements of the general license and either NRC concurrence in completion of remedial actions (Title I site) or termination of the Title II site license.

Although the regulations differ somewhat in regards to inactive sites (Title I of UMTRCA) and active sites (Title II of UMTRCA), the basis for what would constitute adequate long-term care is the same. One difference is that Title

II sites may be transferred to the Federal government or a State, whereas, Title I sites would only be transferred to the Federal government. This provision does not apply to sites located on Indian lands, to which different requirements apply based upon whether it is a Title I or Title II site.

The Stabilization and Long-Term Care Program

Although the end result for long-term care licensing for Title I or Title II sites would be 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 Environmental Protection Agency (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. (See 40 CFR Part 192-Health and Environmental Protection for Uranium Mill Tailings, Subparts A, B, and C). However, in 1985 the 10th Circuit Court of Appeals remanded the ground water portion of these standards. New ground water standards are expected to be finalized during 1990.

The Department of Energy 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 would be for the purpose of ensuring compliance with UMTRCA.

For Title I sites in which NRC has concurred with the selection of remedial action and the action has been essentially completed prior to final promulgation of ground water standards by EPA, these sites will not be affected by the eventual scope and content of final ground water standards. Delaying

implementation of the remedial action program would be inconsistent with Congress' intent to timely complete the program. Modifications of disposal sites after completion of the remedial action to comply with EPA's final ground water protection standards may be unnecessarily complicated and expensive and may not yield commensurate benefits in terms of human and environmental protection. Therefore, the Commission believes that sites where remedial action has been essentially completed prior to EPA's promulgation of final ground water standards will not be impacted by the final ground water standards. Although additional effort may be appropriate to assess and cleanup contaminated ground water at these sites, the existing designs of the disposal sites should be considered sufficient to provide long-term protection against future ground water contamination. NRC does not view UMTRCA as requiring the reopening of those sites that have been substantially completed when NRC concurred with the selection of remedial action in accordance with applicable EPA standards, 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 remedial action (which includes 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 of 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 remedial action at the processing site has been accomplished in accordance with the approved plan may be accomplished in two steps where residual radioactive material is not being moved. The "Uranium Mill Tailings Remedial Action Amendments Act of 1988" allows for a two step approach for Title I disposal sites. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The second step which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the Long-Term Surveillance Plan will be appropriately amended. For sites that are being moved, licensing will occur in one step. There is no ground water restoration at the disposal site and the cleaned up processing site is not licensed.

The third phase is the licensing phase. The general license is effective following (1) NRC concurrence in the DOE determination that the disposal site has been properly reclaimed and (2) the formal receipt by NRC of an acceptable Long-Term Surveillance Plan. NRC concurrence with completion indicates that the site has been stabilized in accordance with EPA standards. This NRC concurrence may be completed in two steps as discussed above. 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 LTSP. In this phase DOE and NRC periodically inspect the disposal site to ensure its integrity. The LTSP 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 would require emergency repairs as necessary. In the event that significant repairs are ever necessary, a determination would be made on a site specific basis regarding the need for additional National Environmental Policy Act (NEPA) actions, and health and safety considerations from Parts 19, 20, and 21.

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.

Title II processing 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 would close the site to meet all applicable standards after completion of operations.

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. Once the future long-term care licensee has submitted a suitable LTSP, the general license takes effect when either NRC terminates the current specific license or when NRC concurs with an Agreement State's termination of the current specific license. This rulemaking provides the Commission with two options to maintain control over sites in the unexpected situation when: (1) an acceptable LTSP has not been submitted; (2) the current specific license is ready to be terminated; (3) NRC has determined that the disposal site has been closed in accordance with applicable standards; and (4) disposal site custody has been transferred to the long-term care licensee. The Commission could delay termination of the specific license until an acceptable LTSP is submitted or issue an order requiring surveillance by the custodian of the disposal site, who will become the long-term care licensee under the general license. The Commission considers either of these actions to be sufficient to ensure that the site will be under surveillance and control during the transition period from the specific to the general license. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. In such cases, the prime option would be to issue appropriate orders. The Commission, however, does not want to preclude the

option of not terminating the specific license if this should be appropriate for a relatively short period.

The general license approach for Title II sites would be 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 disposal site are limited to subsurface rights, whereas, a Title II disposal site could also potentially allow the usage of surface rights. (See the "Future Uses of the Disposal Site" section.)
4. 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 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.
5. The determination that remedial action at Title I disposal sites has been completed may be done in two steps, whereas the determination of acceptable closure for Title II sites will be done only once before license termination.
6. There is an additional Title II requirement when a 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 surveillance will be transferred to the United States. This requirement has already been codified in Part 150 and is not part of this rulemaking.

7. 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.

The Long-Term Surveillance Plan (Title I and Title II)

DOE, or the appropriate State, will submit a disposal site Long-Term Surveillance Plan to the NRC to coincide with completion of remedial actions (Title I) or license termination (Title II). DOE, or the appropriate State, will be responsible for preparing the LTSP since this document will clearly define their responsibilities under the general license.

Title I

The DOE has developed a "Guidance for UMTRA Project Surveillance and Maintenance" document issued in January 1986. This document, which was developed with NRC staff coordination, provides detailed generic guidance for what information should be considered in designing an LTSP for Title I disposal sites. The DOE guidance document addresses five primary activities. These activities, which are discussed in the following paragraphs, are:

1. Definition and characterization of final disposal site conditions.
2. Disposal site inspections.
3. Ground water monitoring, if necessary.
4. Aerial photography.
5. Contingency (or emergency) repair, and planned maintenance if necessary.

DOE indicated that final disposal site conditions should be defined and characterized prior to the completion of remedial actions at a site. As-built 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 disposal site LTSP specifies that ground water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

DOE describes three types of disposal site inspections: Phase I, Phase II, and contingency inspections. Annually scheduled 1 to 2 day 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 ground water conditions would be determined on a site specific basis. If it is determined that ground water monitoring is required for the long-term care at the disposal site, then it should be conducted in two phases, screening monitoring and evaluative monitoring. Screening monitoring would be designed to detect changes in ground water quality attributable to the tailings. If a significant change is apparent, evaluative monitoring should be initiated. Evaluative monitoring would be more extensive and would quantify the rate and magnitude of the change of conditions. EPA is currently finalizing their ground water protection standards. When this is completed modifications may be necessary.

Aerial photographs of the Title I disposal sites should be taken immediately upon completion of the construction and after the permanent surveillance features have been installed. The photographs will be used to prepare the final topographic map and as-built drawings and will be kept in the permanent site file for future reference, should a problem develop at the site. In the unlikely event that a problem (such as erosion) should occur, the photographs provide baseline information about site conditions. New aerial photographs would be taken if it becomes necessary to monitor a problem over a long period of time.

The LTSP should also describe the procedures the long-term licensee would follow if contingency or emergency repairs were needed at the disposal site due to extreme natural events or purposeful intrusion.

The conduct of custodial activities such as grass mowing or fence repair are not precluded. If the long-term care licensee desires to conduct such custodial activities (termed "planned maintenance" in the DOE guidance document), such activities should be described in the LTSP. However, it should be noted that such planned maintenance cannot be relied upon to ensure compliance with the EPA standards.

Title II

Much of the above guidance can be applied to the Title II disposal sites. However, the DOE guidance document includes additional information and recommendations for which the applicability must be evaluated on a site specific basis for Title II sites. Specific requirements for Title II sites are addressed in Appendix A of 10 CFR Part 40. For Title II sites, criterion 10 of Appendix A requires the existing 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. The actual amount of this charge will be set based on a site specific evaluation, which should be included as part of the existing licensee's reclamation plan for the site. 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 to 2 days per site. Post-closure maintenance activities that are relied upon to comply with Appendix A closure standards can only be authorized by considerations of alternatives under Section 84(c) of the Atomic Energy Act of 1954, as amended. In such cases, the minimum charge for long-term surveillance to the existing licensee will be increased accordingly to provide for this maintenance. 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).

The custodial agency will prepare an LTSP for each site using input from the existing licensee's reclamation plan, including the evaluation of long-term surveillance needs. Thus, important site information will be transferred from the existing licensee to the custodial agency. The existing licensee, however, will not be required to prepare the LTSP. In addition the LTSP will not affect the long-term surveillance charge paid by the existing licensee (the LTSP may also reflect additional site-specific activities which are not to be reflected in the long-term care charge, but are voluntarily committed to by the custodial agency).

Future Uses of the Disposal Site

UMTRCA provides for potential future uses of the disposal site. For a Title I disposal 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 disposal 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 to the Federal or State government 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.

Need for Proposed Regulation

UMTRCA requires that NRC license the long-term care of inactive and active (as defined in Title I and Title II) uranium or thorium mill tailings disposal sites. There are 24 inactive sites and currently 29 sites licensed either by NRC or an Agreement State that have accumulated tailings. Completion of the Title I program is currently scheduled for 1994 and these sites will need to be

licensed (many sites will be completed prior to 1994). Eventually all of the currently licensed sites will also need a long-term care license. Of the 29 facilities, 27 have shut down and 18 have decommissioning and reclamation actions either planned or underway. The NRC, in response to the licensing directive of UMTRCA, must establish and carry out a plan for licensing these tailings sites as remedial action activities and closure are completed.

Environmental Impacts

The NRC does not foresee any significant adverse environmental impacts based on this regulation. The regulation will provide a licensing procedure to ensure that remediated and closed sites would remain in a safe and environmentally sound condition.

Prior to completing remedial actions at Title 1 sites a detailed Environmental Assessment or Environmental Impact Statement has been prepared. The major impacts associated with the site, therefore, have already been addressed in detail. All of these impacts occur during the characterization and construction of these sites, unless emergency measures or maintenance is required after closure. The environmental impacts dealing with long-term care are those resulting from inspections, and other actions which may be necessary such as maintenance, ground water monitoring, and emergency repairs.

Inspections, planned maintenance, and monitoring require a team of inspectors at the site. The inspections would be done at least annually. The inspectors would generally examine the disposal site and facilities, and surrounding areas. Planned maintenance to repair signs, fences, etc. would be done as needed. Ground water monitoring, which may not be required at all sites, requires sampling and laboratory analysis and would provide information to ensure that the site is performing as expected. Any adverse environmental impacts associated with these activities (dust from the car, disturbing wild life, etc.) are trivial compared with the benefits gained from providing these routine inspections to ensure site integrity.

If repairs are required, the NRC, in coordination with the long-term care agency, would determine if further National Environmental Policy Act

considerations are needed on a case-by-case basis. For example, repairs to a gully forming on the side of a site would not likely require further NEPA considerations, whereas extensive preventative measures due to river meander probably would.

NRC could choose to license these sites with a general license or by issuing separate licenses for each site. The licensing basis would be the same. The use of general licenses (one for Title I and one for Title II), with LTSP's is the most efficient use of resources. Each site, inactive and active, to which the general license would eventually apply, has undergone a full NEPA review in conjunction with a remedial action, or a licensing action, which has fully addressed site specific environmental concerns. Accordingly, no further environmental review is seen as necessary for the general licenses, or for the receipt of LTSP's.

The following agencies were consulted during the development of this environmental assessment: DOE and uranium mill Agreement States.

The following sources of information were used: UMTRCA of 1978, as amended, 10 CFR Parts 40, 51, and 150, NUREG/BR-0058, Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/CR-0053, Regulations Handbook, UMTRA-DOE/AL-350124.0000, Guidance for UMTRA Project Surveillance and Maintenance (Jan. 1986).

Finding of No Significant Impact

The NRC is adopting two general licenses for the custody and long-term care of uranium or thorium mill tailings disposal sites. This licensing is required by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The two general licenses relate to Title I of UMTRCA (inactive sites) and Title II of UMTRCA (active sites). Although the regulations differ somewhat between Title I and Title II licensing, the basis for what would constitute adequate long-term care is the same.

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 is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule establishes general licenses for long-term care of uranium or thorium mill tailings disposal 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 disposal sites remain in good condition. If unexpected repairs are ever required, the long-term care licensee will be responsible to make the necessary repairs and to assess, at that time, the nature and significance of any environmental impacts under NEPA. Therefore, the actions required under these regulations will be preventative of adverse environmental impacts.

ENCLOSURE 3 - REGULATORY ANALYSIS

Regulatory Analysis
for Rulemaking on
the Custody and Long-Term Care
of Uranium and Thorium Mill Tailings Disposal Sites
(UMTRCA Title I and Title II)

1. Statement of the Problem

The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires that the NRC license the custody and long-term care of uranium or thorium mill tailings sites after remedial actions or license termination have been completed. These sites include both inactive (UMTRCA Title I) sites and currently licensed (UMTRCA Title II) sites. There are no current regulatory procedures or criteria to meet this licensing need.

All of the DOE remedial actions (other than ground water restoration) are expected to be completed for the Title I sites by the end of the program in 1994. Also many Title II sites have decommissioning and reclamation either planned or underway.

These regulations are needed to meet the NRC's statutory requirement and to provide assurance that reclaimed and closed sites will remain in a safe and environmentally sound condition.

2. Objectives

The objective of this regulation is to provide a procedure to ensure that reclaimed and closed sites are cared for to protect public health and safety and the environment. This will include procedures for surveillance of the sites, providing for planned maintenance if needed, and ensuring that, if required, emergency measures are completed.

3. Alternatives

The alternatives are of style not substance. NRC could choose to license these sites with a general license or by issuing separate specific licenses for each site.

4. Consequences

Either of the alternatives will have the same licensing basis and the end result would be the same. In providing for one general license for Title I disposal sites and one for Title II disposal sites, NRC, DOE, State, and Indian resources will be used most efficiently. NRC should expend about two staff years of effort to complete this rulemaking.

The general licenses will become effective for each individual Title I or Title II disposal site upon NRC acceptance of a site Long-Term Surveillance Plan (LTSP) and either NRC concurrence in completion of remedial actions (Title I site) or termination of the Title II site license. The LTSP will be submitted by the Department of Energy for Title I sites, or the Department of Energy or a State for Title II sites. The LTSP will discuss ownership of the site, site conditions, the surveillance program, required follow-up inspections, and how and when emergency measures and, if necessary planned maintenance, will be accomplished.

The Department of Energy (or another Federal agency designated by the President) or a State will develop the detailed LTSP for each site. In January 1986, the Department of Energy developed a document titled "Guidance for UMTRA Project Surveillance and Maintenance." Specific LTSP's for Title I sites will be modelled from this guidance. For Title I sites the Department of Energy has advised us, through oral communication, that the site specific LTSP's are estimated to average \$20,000 to develop. Implementation of the site specific LTSP's will obviously vary, but on average the DOE estimates about \$50,000 the first year, \$27,000 per year over the next 5 years, and \$17,000 per year thereafter for the anticipated

DOE activities at the Title I sites. The preliminary nature of DOE's cost estimates, coupled with the uncertainty in applying the LTSP planning guidance to Title II sites, prevent direct extrapolation of the estimates to Title II sites.

5. Decision Rationale

The NRC is adopting to use general licenses to meet our statutory requirement. This approach is the easiest and least costly. It is also consistent with the other NRC licensing actions of governmental agencies and has worked effectively. The choice of a general license is primarily justified by the reduced administrative burden on the NRC. At this stage in the process, all of the remediation and decommissioning actions will have been completed. The general license will only cover custody and surveillance of the disposal site. It will not cover operational activities or the use of byproduct materials. Prior to the general license becoming effective for each site, the NRC will have ensured compliance with applicable safety and environmental requirements through direct regulatory oversight, significant observation and concurrence with remedial actions, or concurrence with Agreement State terminations of specific licenses. Because the substantial issues associated with remedial action and closure will have already been resolved, there would be limited benefit from specific licenses, environmental assessments, and public hearings for each site. Throughout the Title I remedial action program and the Title II program up to this stage, there will have been abundant opportunities for the public to participate in decisions affecting site operation, remedial action, and closure.

Differences between the general and specific licensing approaches include the degree to which the following are provided: (1) opportunity for a public hearing, (2) a NEPA analysis, (3) a safety evaluation, and (4) the administrative process resulting in the issuance of a specific license. NRC commits to considering the need for providing additional opportunities for public meetings in the general licensing process for long-term custody of uranium or thorium mill tailings disposal sites. The Environmental Assessment prepared in support of this rulemaking confirms generically

that there are no significant impacts to the environment associated with NRC's licensing of the long-term custody of the disposal sites. Before the general license can go into effect, the tailings sites will have been stabilized in accordance with applicable standards to ensure protection of human health and the environment. In addition, implementation of an acceptable LTSP will provide for adequate surveillance (and monitoring) to protect the public health and safety and the environment. Thus, an additional safety evaluation at this stage is unnecessary. Further, NRC will not sacrifice any control over these sites by using the general licenses. In the unlikely event that additional measures are necessary, regardless of the type of license, the NRC will issue orders to the long-term care licensee to compel appropriate action. Therefore, general licenses provide the necessary control of the disposal sites with minimal administrative burden relative to that associated with specific licenses.

6. Implementation

An Advance Notice of Proposed Rulemaking was issued August 25, 1988, and a proposed rule was issued on February 6, 1990. The final rule should be published during 1990.

During 1990 several Title I sites should be ready for submittal of LTSP's with the rest scheduled by 1994. Title II sites will be licensed as closure and license termination are completed. There is no termination date for the general licenses.

ENCLOSURE 4 - PROPOSED RULE COMMENTS AND ANALYSIS

DETAILED COMMENT ANALYSIS

Commenter 1: Jeffrey H. Desautels, Sr. Attorney, Arco Coal Company.

Comment 1.1: Arco Coal Company ("Arco") appreciates the opportunity to comment on the referenced proposed rule. Arco owns the Bluewater Uranium Mill near Grants, New Mexico which is an "active" site subject to the requirements of Title II of the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"). The Bluewater Mill is being demolished at this time, and in addition Arco has submitted a plan to the NRC for approval of final reclamation and closure under appropriate NRC rules and guidance.

In general, Arco wholeheartedly supports these proposed rules. We believe the Commission has done a particularly good job of setting forth the transition to final DCE custody and control of Title II sites. We have a few specific comments and questions regarding certain aspects of the proposed rules.

Our first comment relates to the statement, repeated several places within the preamble to the proposal, that the DOE is responsible for preparing and submitting to the Commission a "Long-Term Surveillance Plan," or LTSP. Because this requirement is placed upon the DOE, rather than the specific licensee, the NRC has determined that the proposed rule will not significantly impact the private sector. Our concern in this regard is that if DOE delays preparation and submittal of the LTSP, the licensee may be placed in a position of having to delay final closure and turnover of its site to the federal government. This would cause further costs to be imposed, creating doubt in our minds as to whether this rule truly will have no significant impact on the private sector.

The preamble (at p. 3974) and the proposed rule itself are not specific enough in this regard. The preamble states that in the event the LTSP has not been submitted by DOE by the time the NRC is ready to terminate the specific license, the NRC has the choice of either delaying termination of the specific license, or of ordering the DOE to assume control over the site and conduct surveillance. Section 40.28(b) contains the same optional language. Licensees need to be assured that turnover will not be delayed. Therefore, the NRC

should change the second sentence of Section 40.28(b) to read that "...the Commission shall issue a specific order to the intended custodial agency to ensure continued control and surveillance of the site to protect the public health, safety, and the environment." Otherwise, licensees could be placed in the untenable position of having final closure delayed, perhaps indefinitely, which DOE decides whether and when to submit an LTSP. That would create significant financial impacts on the private sector that can't be ignored by NRC in this rulemaking.

Response: We agree that an indefinite delay in terminating the license could increase the impacts to an existing licensee. Wording will be added to the rule and Statement of Consideration that NRC does not think it is appropriate for the private sector to be significantly impacted by lack of action on DOE's (or the State's) part. Therefore, if significant financial impacts are anticipated, issuing an order would be our prime option. However, the Commission wants to retain the option of not terminating the specific license if this might be appropriate for a relatively short period.

Comment 1.2: Our second point relates to the "minimum" \$250,000 payment for long-term surveillance. Again, there appears to be some confusion regarding how the specific amount of that payment is to be determined. On p. 3974 of the preamble, it is noted that "(T)he minimum charge may be adjusted based on site specific requirements in excess of those specified in Criterion 12 of Appendix A." We assume that such an adjustment would be used only in cases where a closure plan requires active maintenance rather than the passive maintenance scheme assumed in Criterion 12. However, that is not made explicit in the proposal. For example, on p. 3975 the following statement appears:

Post-closure maintenance activities that are relied upon to comply with Appendix A closure standards can only be authorized by considerations of alternatives under Section 84(c) of the Atomic Energy Act of 1954, as amended. In such cases, the minimum charge for long-term surveillance to the existing licensee will be increased accordingly to provide for this maintenance.

That section continues:

"In addition the LTSP will not affect the long-term surveillance charge paid by the existing licensee (the LTSP may reflect site-specific additional items, but will not affect the charge to the existing licensee)."

We assume that so long as standards in effect at the time the NRC approves the closure plan are followed by the licensee, and the closure plan itself provides for passive maintenance measures only, the charge will be \$250,000. Additional requirements proposed after that point by the DOE will not increase the payment. The DOE should examine each site for a LTSP on a site-specific basis, consistent with NPC criteria.

Response: Commenter is correctly interpreting what this section means. That is, if the long-term care licensee desires to have requirements in the LTSP that are over and above those of Appendix A, the charge to the existing licensee would not be affected. We will add a reference to the material on page 3974 to the more detailed discussion in Section V, The Long-Term Surveillance Plan, Title II. It should be clear that the \$250,000 is a minimum charge in 1978 dollars and, therefore, the actual amount paid at closure will be significantly higher because it will be adjusted for inflation as required in Appendix A, Criterion 10. Clarifying language has also been added.

Commenter 2: Robert M. Quillin, Director, Radiation Control Division,
Colorado Department of Health.

Comment 2.1: The rule includes no direct, explicit provision for state concurrence in a Long-Term Surveillance Plan (LTSP) prepared by the federal government. This comment was provided in our letter of October 21, 1988 (copy enclosed) and was not addressed in Section VIII, comments on the ANPRM, of your February 6, 1990 FR notice.

Response: This comment was responded to in NRC's detailed comment analysis and is repeated below.

The ANPRM and proposed rule did not provide for specific State concurrence in the NRC licensing actions, because the State has no regulatory authority under the AEA during the long-term care period. The State, as a member of the general public, may comment on any action to be taken by the NRC. We would like to note that, for the Title II sites, the State, at its option, can be the custodial governmental agent and, therefore, become the responsible party to prepare and implement the LTSP under the general license issued by the NRC.

If significant environmental consequences occur at either Title I or Title II sites in the future, the failure will not likely be as a result of the LTSP, but will most likely be as a result of an inadequate design or construction. The States have been and will continue to be integrally involved in the design and construction phase of remedial action or closure. The commenter appears to over estimate the purpose of the LTSP which is the surveillance of the reclaimed or closed site, not the performance of significant maintenance work. The performance of significant work at licensed sites under this regulation requires specific authorization from the NRC.

The commenter incorrectly states that the State has the authority to inspect and to require actions at licensed sites under long-term care. The authority to license, inspect, and enforce the requirements for long-term care under the AEA are reserved to the Commission.

Comment 2.2: As before, please be advised that all of Colorado's Title I sites are either specifically licensed (6) or regulated under the general criteria of Part XI of Colorado's Rules and Regulations Pertaining to Radiation Control. Over twenty years of experience with inactive site maintenance and interim stabilization shows this to be essential.

Response: Noted. The NRC licensing mechanism will provide for perpetual care of these disposal sites.

Comment 2.3: A flaw in the proposed rule which requires correction is the apparent premise that a Long-Term Surveillance Plan (LTSP) will be prepared only after closure and license termination. Colorado requires and will continue to require the development and establishment of an adequate LTSP and Fund prior to termination of a commercial uranium mill site license. The language of the proposed rule should be modified to clarify this option.

Response: Commenter is incorrectly reading the proposed rule. The LTSP will be prepared during site closure. See Section V, The Long-Term Surveillance Plan. Under normal circumstances, the NRC will not terminate the specific license until an LTSP has been accepted by NRC. See the response to Comment 1.1 for the procedures in unusual cases.

Comment 2.4: No active maintenance is the goal of 10 CFR 40, Appendix A. Colorado's comments on NRC's uranium mill rules have strongly supported reclamation which keep long-term monitoring and maintenance to the minimum. However, at some sites in Colorado where milling and milling impacts have occurred for many years, the Radiation Control Division expects the amount of a site-specific long-term care fund to be substantially greater than \$250,000 in 1978 dollars. The proposed rule fails to address the dedication of such funds to care of a specific site, if and when transfer of the site to the federal government should occur. The rule should provide mechanisms toward assuring that adequate funds will continue to be available.

Response: Commenter is correct that for sites transferred to the Federal Government funds are not dedicated for a specific site. They are deposited into the general Treasury (see 10 CFR Part 40 Appendix A, Criterion 10). The DOE must request federal funds to implement the LTSP. The NRC has been seeking legislative change to this feature of Part 40. Petition has been forwarded to the U.S. Congress to allow the NRC to hold financial mechanism for decontamination, decommissioning, reclamation and long-term monitoring, maintenance and surveillance.

Comment 2.5: No specific language in the Atomic Energy Act of 1954, as amended, or in 10 CFR, requires the particular general license approach to custody and long-term care presently chosen. NRC's approach takes cognizance of the reserved obligation in 10 CFR 150.15a(b)(4) and (5) concerning minimum standards for long-term monitoring, surveillance, and maintenance of land used as a disposal site for byproduct materials. As specifically authorized by the Act, however, LTSPs for Colorado Title II sites may be required to meet more stringent state requirements.

Response: As an Agreement State, Colorado may impose more stringent operating and closure requirements than that required by the NRC. However, once the license is terminated, the requirements for an acceptable LTSP and the enforcement of its implementation are solely those of the NRC. (See response to comment 2.1)

If a State wishes to become the long-term care licensee, they may add more stringent requirements in the LTSP than what is required by this rule. However, any costs resulting from requirements more stringent than those in 10 CFR Part 40, Appendix A shall not be charged to the existing licensee.

Committer 3: Mark L. Matthews, Project Manager, Uranium Mill Tailings Remedial Action Project Office, DOE.

Comment 3.1: General Comment.

The language in the Supplementary Information is often not consistent with the intent of the amendments. The most commonly occurring such inconsistency is the use of the word "site" when "disposal site" or in a few cases "processing site" should be used.

It is noted that the amended language in the Proposed Rule clarifies that surveillance and maintenance for the Title I sites will be required only at disposal sites; however, there are still several areas where Commission policy is not clearly defined. The regulations clearly state that the general license will be issued for the "long-term care of the disposal site" and that issuance of the general license is contingent upon (1) receipt of a surveillance and

maintenance plan for the disposal site and (2) the Commission's concurrence that "the remedial action is complete." The Commission states in this Proposed Rule that full concurrence for any given "site" will not be forthcoming until the aquifer restoration phase of the UMTRA Project has been completed for that site. It is not clear from the Proposed Rule, even with the proposed two phases for licensing, if "full licensing" is conditional upon groundwater restoration at any processing site, or at just the sites where the materials were stabilized in place. It is assumed that "site" in this context applies to the processing site whether or not it is also a disposal site.

Response: We will clarify the language to be more specific regarding disposal versus processing site. Commenter incorrectly assumes long-term care licensing would be conditional if the tailings are moved from the processing site. The disposal site may be licensed even though ground water cleanup is continuing at the processing site.

There will be a difference in how the two step licensing approach will be used depending upon whether the site has been stabilized in place or moved. The two step approach, as it will apply for this LTSP and licensing, will only be used for sites stabilized in place. For sites that are moved there will be no ground water restoration at the new site and the old site will not have an LTSP or license associated with it. When DOE moves a site, the original processing site will be cleaned-up to meet EPA standards for unrestricted use. When this is the case NRC will not license these processing sites.

For sites stabilized in place and requiring additional ground water restoration, the LTSP will cover all the elements identified in the proposed rule, except for detailed ground water restoration actions. The LTSP may still require ground water monitoring to insure that actions taken for ground water restorations are not affecting the integrity of the stabilized pile. For example, if ground water restoration activities are impacting leaching through the pile, monitoring under the LTSP should be able to identify this and require any necessary corrective actions.

In summary, regardless of whether residual radioactive material is relocated or not, the custodial agency will be an NRC general licensee at the disposal site only. If ground water restoration at the processing site is necessary when the material is relocated, this will have no impact on the general license for the disposal site. If ground water restoration is necessary for a site stabilized in place, then licensing will be done in two steps.

Comment 3.2: Specific Comments

Comments on the Supplementary Information text are grouped by section, as provided in the Proposed Rule notice. Paragraphs are numbered by section. Text from the proposed rule is provided in sufficient detail to clarify the comment. Pertinent phrases for discussion are underlined.

Section I. Background

1. The word "site" appears throughout the text. Although "disposal site" generally is the implied definition, it is not always so; therefore, the term should be clearly stated as such, or as "processing site" when appropriate.

Response: We will add clarifying language.

Comment 3.3:

2. Paragraph 2, sentences 1 and 2: "Title I of UMTRCA...remedial action program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by the DOE, these sites be cared for..."

Comment:

- i. Consistent with Section 104(f)(2) of the UMTRCA, which governs the custody of any property transferred to the DOE or other designated Federal agency, the license granted by the NRC will be for the

long-term care of the disposal sites. The following revision is suggested:

"Title I requires..., the permanent disposal sites be cared for..."

Response: We will make this change.

Comment 3.4:

Section II. Proposed Action

1. Second paragraph, last sentence: "...upon receipt of an LTSP that meets the requirements of the general license..."

Comment: It is noted that in this paragraph and in other sections of the text the word "receipt" is used; however, in the proposed regulation, 40.27, "acceptance" is the wording.

Response: The meanings are the same. If an LTSP is received that meets the requirements of the general license, it is acceptable.

Comment 3.5:

2. Paragraph 4, first sentence: "The general licensees for long-term care are exempted from 10 CFR Parts 19, 20, and 21..."

Comment:

- i. There are no provisions in the regulations which state explicitly that the general licenses are exempt from 10 CFR Parts 19-21, as discussed in the proposed action. The Commission should evaluate the need to include this in the regulations, consistent with the exemption specified for Section 40.7, Employee protection.

Response: These provisions are in §40.27(e) and §40.28(e).

Comment 3.6:

3. Paragraph 7, first sentence: "Criterion 12 only deals with Title II licensees....Title I should have comparable reporting requirements,..."

Comment:

- i. The regulations should specify that reporting requirements comparable to Appendix A, Criterion 12, are applicable to Title I disposal sites.

Response: The current wording provided DOE with more flexibility in developing reporting requirements for Title I sites. However, since DOE is requesting this change we will add it to the rule.

Comment 3.7:

4. Paragraph 8, first sentence: "There are some differences in requirements for sites located on Indian lands...."

Comment:

- i. For those sites where the disposal facility is on Indian lands, the tribes will retain ownership of the material and the land. An exception is provided in Section 105(b) of the UMTRCA, which states that in those cases where the residual radioactive material from processing sites on Indian land is relocated to a permanent disposal area not on Indian land, the DOE shall acquire title to the residual radioactive material in addition to the disposal site. This should be stated in the text.

Response: We will add this information.

Comment 3.8:

- ii. Suggested revisions to the last sentence:

"Four of the Title I processing sites, of which three will be used as disposal sites, are on Indian land.

Response: We will add this information.

Comment 3.9:

5. Paragraph 10, first sentence: "Both 40.27 and 40.28 allow for potential future uses of the sites..."

Consistent with the UMTRCA, Section 104(h), at the Title I disposal sites, only subsurface mineral rights will be available for future use. However, at the processing sites, once the surface remedial actions are completed, surface rights will be available as long as the use does not impede future groundwater restoration activities. This should not be confused with the Title II disposal sites, where subsurface and surface rights will be available, considered on a case by case basis. This should be clarified in the text.

Response: Section VI will be clarified.

Comment 3.10:

Section III. Uranium Mill Tailings Remedial Action Amendments Act of 1988

1. Paragraph 3, sentence 4: "When groundwater restoration is completed, the Long-Term Surveillance Plan would be appropriately amended."

Comment:

- i. It is not clear here or in the regulations as to which sites this includes. The following revision is suggested:

"At sites where the remedial action was stabilization in place, when groundwater restoration is completed the Long-Term Surveillance Plan would be appropriately amended."

Response: The paragraph will be clarified by modifying the first sentence to read, "As a result of the Amendments Act, the NRC is planning to allow licensing of Title I disposal sites, where the tailings are not being moved, to occur in two steps, if needed."

Comment 3.11:

2. Paragraph 4, first sentence: "The Act itself did not address...requiring mandatory post-closure performance monitoring."

Comment:

- i. "Post-closure" is not the appropriate term for Title I sites where remedial action rather than closure activities are performed; also, 40 CFR 192 requires compliance monitoring rather than performance monitoring (or "screening" and "detection" monitoring). For consistency with the language and the purpose of these two UMTRCA Programs, the following revision is suggested:

...requiring mandatory compliance monitoring..."

Response: We will clarify this sentence to read: "...requiring monitoring after NRC has concurred in completion of remedial action." We specifically did not use EPA terms which might cause confusion. These terms have specific meanings in the EPA ground water standards and therefore might imply requirements which are not appropriate.

Comment 3.12:

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

Title I (24 Sites):

1. Paragraph 5, second sentence: "...decontamination, decommissioning, and reclamation..."

Comment

- i. These are words that have a more appropriate meaning for sites that already have a license, which Title I sites specifically do not have. "Remedial action" should be used here instead, as it is more appropriate for Title I sites.

Response: We will change the sentence to read, "...remedial action (which includes decontamination, decommissioning, and reclamation)..."

Comment 3.13:

2. Paragraph 6, first sentence: "NRC concurrence...that reclamation of the site..."

Comment:

- i. Suggest changing "reclamation" to "remedial action," given the differences in the requirements for Title I and II sites.

Response: We will make this change.

Comment 3.14:

3. Paragraph 6, sentence 5, "When ground water restoration is completed, the LTSP will be appropriately amended."

Comment:

- i. As noted in the general comments in Section A, it is not clear if the two-phased licensing approach is restricted to the sites stabilized

in place (SIP), or to all Title I sites, including the relocated disposal sites.

Response: Only applies to SIP sites. See response to Comment 3.1. Clarification will be added to this paragraph.

Comment 3.15:

4. Paragraph 7, sentence 3: "NRC concurrence with completion indicates that the site has been stabilized in accordance with EPA standards..."

Comment:

- i. As this sentence is written, it is not clear if "stabilization" refers to actual completion of Subpart A requirements or to "completion of remedial action," as is stated elsewhere throughout the text and in the regulations.

Response: The sentence will be clarified to read as follows: NRC concurrence with DOE's performance of the remediation indicates that DOE has demonstrated that the remedial action complies with the provisions of the EPA standards in 40 CFR Part 192, Subparts A, B, and C.

Comment 3.16:

5. Paragraph 7, last sentence: "There is no termination date for the general license."

Comment

- i. Since expiration periods are specified in the regulations for other licensed facilities, that there is no termination to the general license for the Title I and II sites should be specified in the regulations.

Response: We will add this to the rule.

Comment 3.17:

Title II

1. Paragraph 4, item 5: "...Title I sites have been reclaimed..."

Comment:

- i. "Remediated" rather than "reclaimed" should be used to reference the activities at Title I sites.

Response: Item 5 will be clarified to read as follows: "The determination that remedial action at Title I disposal sites has been completed may be done in two steps, whereas the determination of acceptable closure for Title II sites will be done only once before license termination."

Comment 3.18:

Section V. The Long-Term Surveillance Plan (Title I and II)

Title I:

1. Paragraph 5: "If it is determined that groundwater monitoring is required..., then it should be conducted in two phases, screening...and evaluative monitoring."

Comment:

- i. The terms "screening" and "detection" are not consistent with proposed 40 CFR 192. "Compliance monitoring, compliance strategy, and corrective action program" are more accurate terms for Title I disposal sites.

Response: These terms were used and explained because they provide the meaning that NRC believes is appropriate. We specifically did not use EPA terms which might cause confusion. These terms have specific meanings in the EPA ground water standards and, therefore, might imply requirements which are not appropriate.

Comment 3.19:

2. Paragraph 6: "Initial surveillances should include the acquisition and interpretation of aerial photography."

Comment:

- i. Aerial photographs of the Title I sites are taken immediately upon completion of the construction and after the permanent surveillance features have been installed. The photographs are used to prepare the final topographic map and as-built drawings and are kept in the permanent site file for future reference, should a problem develop at the site. In the unlikely event that a problem (such as erosion) should occur, the photographs provide baseline information about site conditions. New aerial photographs are taken if it becomes necessary to monitor a problem over a long period of time.

Response: We will modify this paragraph to incorporate the comment.

Comment 3.20:

B. Comments on Amendments to 10 CFR 40

This section provides comments which address the proposed changes to the Part 40 regulations as they are listed in the Proposed Rule. The proposed language for each part is provided for reference. However, the text is not reproduced in its entirety, but rather in portions of sufficient length to highlight the significance of the comment. Phrases which are subject to comment are underlined.

1. Part 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, or deliver source and byproduct materials,...These regulations also provide for disposal and long-term care of byproduct and residual radioactive material.

Comments: For the reasons stated below, we suggest that the sections above be amended to read:

"receive title to,...transfer, deliver, or dispose of source and byproduct materials, as defined in this part,...The regulations also provide for the long-term custodial care of byproduct and residual radioactive materials."

- i. There are no procedures or regulations within Part 40 which affect or pertain to the disposal of the residual radioactive material at Title I sites. The disposal procedures for the Title I sites are defined in 40 CFR 192. As stated in the "Introduction to Appendix A," Appendix A of 10 CFR 40 outlines procedures for the disposal of byproduct material at active uranium and thorium sites, exclusively. For these reasons, including the term "disposal" in concert with "long-term care of...residual radioactive material" is misleading with regard to the Title I sites. However, under the provisions of 10 CFR 40, which provides regulations for the disposal of the Title II byproduct material, inclusion of "disposal" in this section of the regulations is required. The revisions suggested here are consistent with the language in the proposed revision to Part 40.3, License requirements (55 FR 3978).

Response: The regulations established for disposal of source material are covered under 10 CFR Part 61. Byproduct material disposal under Part 40 is regulated as an activity incidental to the extraction of source material at uranium or thorium processing facilities. Such a change to §40.1 is not within the scope of this rulemaking.

Limiting long-term care to only custodial care would limit the possibility of planned maintenance activities under Appendix A (see the Introduction and Criterion 10). This section will be clarified to read as follows:...These regulations also provide for the disposal of byproduct material and for the long-term care of byproduct material and residual radioactive material.

Comment 3.21:

2. Part 40.2a, Coverage of inactive tailings sites.

- (a) Prior to the completion of remedial action,...for the possession of residual radioactive materials...if the site...Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The Commission...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 of sites, where residual radioactive materials are disposed, under the requirements set out in 40.27.

Comments:

For the reason stated below, we suggest that the first sentence above be amended to read:

"Prior...Uranium Mill Tailings Radiation Control Act of 1978, as amended."

- i. The second reference to the UMTRCA, but not the first, includes "as amended."

Response: We will make this change.

Comment 3.22:

3. Part 40.4, Definitions.

"Residual radioactive material means:... (2) other waste...at a processing site which relates to such processing.... 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."

Comments:

We suggest amending this definition to read:

"(2)...This term is used only with respect to radioactive materials associated with processing operations at sites subject to remedial action...of 1978, as amended."

- i. Since the concept of a disposal site, specifically described, appears first in 40.2a, the use of "sites subject to remediation" could be misleading here.
- ii. "...as amended." should modify the UMTRCA to ensure consistency within the regulations.

Response: To make the first change might appear to imply that remedial actions are limited to concerns for only the radiological component of the waste. UMTRCA stipulated regulatory control with respect to radiological and nonradiological impacts. The second change will be made.

Comment 3.23:

4. Part 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.

Comments:

- i. Paragraph (e) requires posting of Form NRC-3, "Notice to Employees." Since the UMTRA disposal sites are designed for passive maintenance with no permanent on-site personnel, it is prudent to include 40.27 and 40.28 in this exemption.

Response: Noted. This is what was done.

Comment 3.24:

5. Part 40.20, Types of licenses.

(a) Licenses for source material, byproduct material, and residual radioactive material are of two types: general and specific... (regulations define types of licenses here).

(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 the (UMTRCA) of 1978.

(c) Section 40.28 contains a general license...of byproduct material at uranium or thorium mill tailings disposal sites under Title II of the (UMTRCA) of 1978.

Comments:

We suggest amending this section to read:

- (a) "Licenses for source and byproduct material are of two types: general and specific. Licenses for residual radioactive materials are general licenses."
- i. As the regulation is stated in paragraph (a) of 40.20, there is the implication that Title I and II disposal sites are eligible for either a specific or general license, when in fact this is not the case as stated in paragraphs (b) and (c). The same is true for 40.3, License requirements.
 - ii. Use of the phrase "uranium mill tailings disposal sites" is beneficial as it eliminates any confusion or ambiguity regarding licensing requirements and long-term care activities.
 - iii. We note that the term "custody" appears in both paragraphs (b) and (c), not shown here, yet was deleted from 40.1.

Response: Section 40.1 and 40.20 will be revised as suggested.

Comment 3.25:

6. Part 40.27, General license for long-term care of DOE remedial action sites.

(a) A general license is issued for the long-term care, including monitoring, maintenance, and emergency measures necessary..., for remediated uranium mill tailings sites under Title I of the (UMTRCA), as amended. The license is available only to the (DOE), 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 cared for in such a manner...after remedial action is completed.

(b) The general license in paragraph (a) of this section becomes effective when the Commission accepts a site Long-Term Surveillance Plan (LTSP) that meets the requirements of this section and when the Commission concurs with the (DOE's) determination of completion of remedial action at each site. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission...Each LTSP must include-

(1) A legal description...

(2) A detailed description, which can be in the form of a reference, of the final site conditions...If the site has continuing aquifer restoration requirements, then the licensing process will be completed in two phases...When the Commission concurs with the completion of ground water restoration, the licensee shall assess the need to modify the LTSP...If the proposed modifications meet the requirements of this section, the LTSP will be considered suitable to accommodate the second phase.

(3) A description of the long-term surveillance program....

(4) ...criteria for follow-up inspections...

(5) ...criteria for...maintenance or emergency measures.

Paragraphs (c) through (e) are not listed here.

Comments:

- i. Since the license is issued for the custody and long-term care of the disposal sites, it would be more appropriate to change "remediated uranium mill tailings sites" to "disposal sites." As the language stands, "uranium mill tailings sites" does not accurately describe the purpose and intent of the licensing requirements.
- ii. We do not support the change from "receives" to "accepts" for a site LTSP.
- iii. This section should include language that makes it clear that only conditional concurrence will be granted on all remedial action plans until all groundwater restoration issues at processing sites are resolved.
- iv. We support the addition of the paragraph stating that the license becomes effective only upon completion of two matters: (1) receipt of the LTSP and (2) concurrence with the DOE's determination of completion of the remedial action.
- v. We support the new two-phased approach to licensing as we recognize the postponement of licensing pending completion of 40 CFR 192 Subpart B issues would prohibit an effective implementation of long-term care at the disposal sites.
- vi. We support the deletion of the requirement from paragraph (b)(2) that requires the LTSP to provide details on aquifer restoration at the disposal sites.
- vii. Part 40.27 should specify that routine site inspections will be conducted and a report will be submitted to the NRC that summarizes all surveillance and maintenance actions and certifies that site licensing requirements

continue to be met. Or, language should be added that specifies where these criteria can be found. As specified in the Introduction, Criteria 12, Appendix A is applicable here.

viii. "(b)(2)...existing groundwater characterization" should be changed to "...existing groundwater characterization, and compliance strategy for groundwater protection in accordance with proposed regulations set forth in 40 CFR 192."

Response:

- i. We will make this change.
- ii. NRC has made this change to provide a better level of control over the licensing process. If the NRC receives an acceptable LTSP, the long-term care licensee would not be impacted in any way. If an unacceptable LTSP is received it provides the NRC an opportunity to work with the long-term care licensee to correct the deficiencies prior to licensing.
- iii. This section and rule deal only with long-term care licensing. The remedial action plan may include activities that have no relevance towards licensing. For example, if a disposal site is relocated from a processing site, the processing site will receive NRC concurrence that it has been cleaned up, but would not be licensed. See the response to Comment 3.1 for additional details.
- iv. Noted. However, receipt has been changed to accepts.
- v. Noted.
- vi. Noted. However, the LTSP may need to address how aquifer restoration can affect the performance of the disposal site when the tailings are stabilized in place. See also response to Comment 3.1.
- vii. We will add this requirement.
- viii. The NRC does not wish to reference proposed EPA rules in our final rules. However, the sentence will be modified to read, "...including

existing ground water characterization and any necessary ground water protection activities or strategies."

Comment 3.26:

7. Part 40.28, General license for long-term care of uranium or thorium byproduct materials sites.

[text not shown here]

Comment:

- i. For Title II sites on Indian lands, language should be added that states that these sites will be considered on a site-by-site basis.

Response: Licensing of Title II sites on Indian lands is covered in 10 CFR Part 40, Appendix A, Criterion 11F and is not part of this rulemaking. These sites will be handled on a site-by-site basis.

Commenter 4: Richard E. Sanderson, Director, Office of Federal Activities, EPA.

Comment 4.1: 40.27(b) (2) -- This section requires that a groundwater characterization be performed prior to licensing. It should also present guidance as to what is an acceptable characterization.

Response: During the remedial action at the sites, DOE is fully characterizing ground water. DOE will provide ground water characterization information during certification of completion at each site. To meet the requirements of this section, DOE would merely summarize or reference existing information. The section states that the characterization 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. We believe that this is the proper level of detail for this rulemaking.

Comment 4.2: 40.28(d)(1) -- This section allows for future use of remediated or closed sites as long as there is no endangerment of human health and the environment. The rule or preamble should specify exactly the types of studies a licensee must submit to prove that the use will never cause endangerment. Further, the rule should require the placement of a notice in the land title or deed which identifies the site as being used for uranium or thorium mill tailings disposal.

Response: In all cases, either the disposal site will be owned by the Federal or State Government under license by NRC. No further use of the site can be done without a specific NRC license. Since any future use of these sites would probably be very rare and of uncertain purpose, putting this level of detail into the rule or statement of consideration is inappropriate and premature. If and when an application for future use is requested, the NRC (and the long-term care licensee) would handle this on a case-by-case basis. Depending upon the potential future use, existing NRC rules and guides would probably establish a good basis to ensure public health and safety and the environment are not endangered.

Comment 4.3: 40.28(d)(3) -- This section permits future use of the site if a license for such use is granted. The licensee must secure financial arrangements to assure that the site will be restored if the byproduct materials are disturbed. The rule should require the preparation of a closure plan in those cases where disturbance is anticipated as part of future use.

Response: In the situation described by the commenter, a closure plan would be an obvious part of the specific license. No financial plan could be developed and approved without having a closure plan.

Comment 4.4: Appendix A to Part 40 -- This section requires annual inspections of licensed sites. EPA recommends that the inspections be conducted semi-annually for the first five years after closure or remediation, with annual inspections thereafter. The first five years is the time period when most problems occur.

Response: This requirement was developed in a previous rulemaking and the NRC sees no reason to change. Existing Title II sites will require years of closure and monitoring activities prior to obtaining a long-term care license.

However, if a particular site leads the NRC to believe that more frequent inspections are necessary, this would be included in the site-specific LTSP.

Commenter 5: John E. Schrote, Deputy Assistant Secretary, Policy Management and Budget, DOI.

Comment 5.1: Currently, the Department finds that the proposed regulation indicates that ground water monitoring may be required as part of the long-term surveillance plan. The Department also suggests that it may be appropriate to monitor wetlands located in relative proximity to uranium mill tailings sites as part of the long-term surveillance plan. Wetlands can be critical to fish and wildlife in the area, and the maintenance of their integrity and beneficial uses should be considered in developing the long-term surveillance plan.

Response: Contamination of wetlands in proximity to a disposal site would be extremely unlikely if the surface integrity of the site is maintained and monitoring wells show no contamination. If the surface integrity were breached, the LTSP would require that it be fixed. However, if a particular site leads the NRC to believe that wetlands monitoring is necessary and feasible, it would be included in the site-specific LTSP.

Commenter 6: Paul D. Eastvold, Manager, Office of Radiation Safety, State of Illinois.

Comment 6.1: The Illinois Department of Nuclear Safety (IDNS) hereby submits its comments on the above-identified proposed rule concerning custody and long-term care of uranium mill tailing sites. Upon receiving the amended agreement, IDNS will be the lead agency in Illinois for regulating mill tailings sites. We understand that the custody and long-term care of the uranium mill tailings sites will be either with the state or the federal government, currently the U.S. Department of Energy, at the option of the

state. The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires that the custody and long-term care of uranium mill tailings sites be under a license issued by the Commission. We agree that the general license, as in this proposed rule, would be the most efficient means of meeting the statutory requirement. We suggest one modification, that is to change the description of the proposed rulemaking to more accurately reflect that uranium and thorium mill tailings are both included in the rule. The new description would be, "Custody and Long-Term Care of Uranium and Thorium Mill Tailings Sites."

Response: We will amend the title to read: "Custody and Long-Term Care of Uranium and Thorium Mill Tailings Disposal Sites."

ENCLOSURE 5 - DRAFT CONGRESSIONAL LETTERS

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The NRC has sent to the Office of the Federal Register for publication the enclosed final amendment to the Commission's rules in 10 CFR Part 40. The amendment will provide a procedure to license the custody and long-term care of uranium or thorium mill tailings disposal sites after completion of remedial actions or site closure. This licensing procedure, which is required by the Uranium Mill Tailings Radiation Control Act of 1978, provides the criteria to ensure that uranium or thorium mill tailings disposal sites will be maintained in a manner to protect the public health, safety, and the environment after closure. An advance notice of proposed rulemaking on this topic was issued in the Federal Register on August 25, 1988, and a proposed rule was issued on February 6, 1990.

Sincerely,

Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosure: As stated

cc: Senator Alan K. Simpson

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The NRC has sent to the Office of the Federal Register for publication the enclosed final amendment to the Commission's rules in 10 CFR Part 40. The amendment will provide a procedure to license the custody and long-term care of uranium or thorium mill tailings disposal sites after completion of remedial actions or site closure. This licensing procedure, which is required by the Uranium Mill Tailings Radiation Control Act of 1978, provides the criteria to ensure that uranium or thorium mill tailings disposal sites will be maintained in a manner to protect the public health, safety, and the environment after closure. An advance notice of proposed rulemaking on this topic was issued in the Federal Register on August 25, 1988, and a proposed rule was issued on February 6, 1990.

Sincerely,

Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosure: As stated

cc: Rep. Carlos J. Moorhead

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The NRC has sent to the Office of the Federal Register for publication the enclosed final amendment to the Commission's rules in 10 CFR Part 40. The amendment will provide a procedure to license the custody and long-term care of uranium or thorium mill tailings disposal sites after completion of remedial actions or site closure. This licensing procedure, which is required by the Uranium Mill Tailings Radiation Control Act of 1978, provides the criteria to ensure that uranium or thorium mill tailings disposal sites will be maintained in a manner to protect the public health, safety, and the environment after closure. An advance notice of proposed rulemaking on this topic was issued in the Federal Register on August 25, 1988, and a proposed rule was issued on February 6, 1990.

Sincerely,

Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosure: As stated

cc: Rep. James V. Hansen

ENCLOSURE 6 - DRAFT PUBLIC ANNOUNCEMENT

NRC ISSUES REGULATIONS TO PROVIDE FOR LICENSING
OF REMEDIATED AND CLOSED URANIUM AND
THORIUM MILL TAILINGS DISPOSAL SITES

The Nuclear Regulatory Commission is amending its regulations to permit the licensing of activities involving the custody and long-term care of uranium and thorium mill tailings disposal sites after completion of remedial actions or site closure.

Licensing of these disposal sites by the NRC will provide a mechanism for ensuring that they are maintained in a manner that would protect the public health and safety and the environment and will meet the requirements of the Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Title I of that 1978 Act applies to inactive uranium mill tailings sites and requires that, after remedial action programs have been completed at the sites, they be cared for by the Department of Energy, or other Federal Agency designated by the President, under a license issued by the Nuclear Regulatory Commission.

Title II applies to active uranium or thorium mill tailings sites and requires that, after a site is closed and the current specific license terminated, it be transferred to the Federal Government or the State in which a disposal site is located, at the option of the State, and cared for under an NRC license.

The Commission is incorporating two general licenses into Part 40 of its regulations -- one applicable to Title I disposal sites, the other applicable to Title II disposal sites. The general licenses will become effective for each individual Title I or Title II disposal site when NRC receives a suitable site Long-Term Surveillance Plan (LTSP) and either NRC concurs in completion of remedial actions (Title I) or the current specific license is terminated (Title II).

The Long-Term Surveillance Plan will be submitted by the Department of Energy for Title I disposal sites, or the Department of Energy or a State for Title II disposal sites. The plan will detail the ownership (Federal or State) of the site, the agency responsible for custody, the site conditions, the planned surveillance program, the required follow-up inspections and how and when emergency repairs and any necessary planned maintenance would be accomplished.

The long-term care agency holding the general license will be responsible for caring for the disposal site as specified in the Long-Term Surveillance Plan, notifying the Commission of all changes to the plan, guaranteeing permanent right-of-entry to Commission representatives for periodic site inspections, and notifying the Commission before taking any significant actions related to the disposal site.

The general licensee will be required to inspect its disposal sites at least annually to confirm the integrity of the stabilized mill tailings. Results of the inspection will be reported to the Commission within 90 days of the last site inspection for that calendar year, or within 60 days of a specific inspection if any unusual damage or disruption was found during the inspection.

The regulations will allow for potential future use of individual mill tailings disposal sites. However, as required by the UMTRCA, a separate NRC license would be needed to assure that the site remains or is restored to a safe and environmentally sound condition.

An advance notice of proposed rulemaking on this subject was published in the Federal Register on August 25, 1988, and a proposed rule was issued on February 6, 1990.

The amendment to 10 CFR Part 40 will become effective
on _____
(date)