



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 30, 1979

CHAIRMAN

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

The Nuclear Regulatory Commission would like to request your support for legislation to resolve questions arising from the effective date provisions of the Uranium Mill Tailings Radiation Control Act of 1978 enacted by the last Congress. The Commission received a letter dated April 26, 1979 and signed by the principal authors of this legislation in both the Senate and House of Representatives which expressed the intent of the drafters regarding the date on which licensing authority and procedural requirements under the Act would become effective with respect to the Commission and affected State governments. The letter supports the position that existing authority of Agreement States to license uranium mills and to control mill tailings should not be disrupted during the three-year interim period following enactment and that during this period the NRC should not be required to exert concurrent licensing authority over tailings produced in milling activities regulated by the Agreement States.

The Commission is mindful of and sympathetic with these views. Nonetheless, after a careful analysis of the language of the 1978 Act, a majority of Commissioners have concluded that without amendments to the Act the NRC is required to license tailings at Agreement State-regulated uranium mills during the three-year period before the Act permits renegotiated agreements to become effective. Pursuant to this decision as to the meaning of the Act, implementing regulations and associated arrangements are now being prepared.

Enclosed with this letter is a draft of statutory language and a section-by-section analysis which would accomplish the intent of the principal authors of the legislation, as expressed in the April 26, 1979 letter. All Commissioners agree that such clarifying language is desirable. Some additional clarification which the Commission believes necessary are also included and are described in the section-by-section analysis. The Commission believes that prompt enactment of this legislation is necessary to assure that the intent expressed by the authors of the Act may be carried out during the remainder of the three-year interim period.

Sincerely,

Joseph M. Hendrie

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Enclosures:

- 1. Draft Legislation
- 2. Analysis

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AN ACT

To add clarifying amendments to the Uranium Mill Tailings Radiation Control Act of 1978, and for other purposes:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SEC. 1. Section 204(h) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding at the end thereof a new paragraph to read as follows:

"(3). Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274b of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material as defined in section 11e.(2) of that Act, the Commission shall not, until the date three years after the date of enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated. If, upon expiration of the three-year interim, a State has not entered into such an agreement with respect to byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material."

SEC. 2. Section 204(h)(1) of the Uranium Mill Tailings Radiation Control Act is amended to read:

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"Sec. 204(h)(1). On or before the date three years after the date of enactment of this Act, notwithstanding any provision of this title, any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to Section 274 of the Atomic Energy Act of 1954, as amended) respecting (a) by-product material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, or (b) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the enactment of this Act; provided, however, that nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 as may be necessary to implement title I of this Act."

SEC. 3. The last sentence of section 83a of the Atomic Energy Act of 1954 is amended to read:

"Any license in effect on the effective date of this section and subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

SEC. 4. Section 204(e) is amended by adding at the end thereof a new paragraph to read as follows:

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"(2). This subsection shall be effective on the date three years after the date of enactment of this Act."

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SECTION-BY-SECTION ANALYSIS

A product of the hectic final days of the 95th Congress, the Uranium Mill Tailings Radiation Control Act of 1978 contains certain provisions regarding dates of effectiveness which, if left to stand, may be subject to differing legal interpretation. Specifically, two questions of immediate concern have arisen regarding the timing of State and NRC implementation of title II of the Act:

(1) Do both the States and the Federal Government have authority to license uranium mill tailings (i.e., exercise concurrent licensing jurisdiction) for the three years following enactment of the Uranium Mill Tailings Radiation Control Act?

(2) Are the requirements of new section 2740 of the Atomic Energy Act pertaining to procedures to be followed by Agreement States in issuing source material licenses for uranium mills immediately effective?

These questions have arisen because one section of the Uranium Mill Tailings Radiation Control Act (section 208) makes the provisions of the regulatory program in title II of the Act immediately effective unless otherwise specified, and another section of the Act (section 204(h)(1)) delays the effectiveness of certain provisions of the Act regarding State authorities for three years after the date of enactment. Accordingly, the Nuclear Regulatory Commission has proposed amendments to clarify the effective dates of title II.

These amendments generally provide a three-year interim period before the requirements in title II of the Uranium Mill Tailings Radiation Control Act (Mill Tailings Act) apply to milling operations and tailings licensed by Agreement States.

In non-Agreement States, the NRC would have immediate authority to implement the regulatory program in title II. Although section 204(h)(1) preserves prior State authority for three years, in case of conflict between Federal and State law, the Federal would prevail.

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One of the provisions in title II (section 206) adds a new section 275 to the Atomic Energy Act of 1954. Section 275 authorizes certain Environmental Protection Agency standards which are, under section 108(a)(2) of the Mill Tailings Act, a prerequisite to the remedial actions authorized in title I. Thus it is stressed that these clarifying amendments are not intended to prevent the Administrator of the Environmental Protection Agency or the Nuclear Regulatory Commission from taking such action under section 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

Sec. 1. During the three years following enactment of the Mill Tailings Act, section 1 prohibits the NRC from exercising duplicative authority over tailings produced in activities licensed by Agreement States unless the agreement is terminated within that period. The EPA and NRC may, however, take such action under 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

Sec. 2. This section makes the provision in section 204(h)(1) of the Mill Tailings Act preserving State authority over tailings and wastes for the three-year interim conform to the new requirements of the Mill Tailings Act which apply to both byproduct material and milling operations that result in the tailings and wastes now defined as byproduct material. As enacted, section 204(h)(1) mentions only byproduct material specifically, although the regulatory program generally covers both milling and tailings. As amended, this section explicitly covers both byproduct material and milling operations and applies also to States that enter into agreements during the three-year interim.

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Further provision is made so that EPA and NRC may take such action under section 275 of the Atomic Energy Act of 1954 (as added by the Mill Tailings Act) as may be necessary to implement the remedial action program in title I of the Mill Tailings Act immediately.

Sec. 3. As originally enacted, section 83 of the Atomic Energy Act of 1954 may be subject to various interpretations regarding its timing. Its provisions are not, under section 202(b) of the Mill Tailings Act, to become effective until three years from their date of enactment. Nonetheless, section 83a (as added by section 202 of the Mill Tailings Act) states that licenses in effect on the date of enactment of this section must comply with 83a(1) and (2) upon their renewal or termination, whichever first occurs. Conceivably this renewal or termination could take place during the three-year period in which section 83 is not supposed to be effective. The sentence as amended applies section 83a only to licenses that are renewed or terminated after the effective date of section 83.

Moreover, it might be argued that a loophole was left for licenses issued after the date of enactment but before the effective date of section 83. It could be argued that such licenses would not be covered by section 83a. As amended, the section applies the requirements of section 83a to any license in effect on the effective date of section 83.

Sec. 4. This section amends section 204(e) of the Mill Tailings Act to make it clear that the new Agreement State responsibilities regarding tailings

and milling operations in new section 274o of the Atomic Energy Act are not effective until three years after the enactment of the Mill Tailings Act. The States are, however, encouraged to implement the new standards and requirements of the Mill Tailings Act to the maximum extent practicable.

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