

**AMERICAN
MINING
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December 4, 1980



Mr. Samuel J. Chilk
Secretary
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Secretary:

The American Mining Congress is a trade association founded in 1897. Its membership is composed of over 500 U.S. companies that produce most of the nation's metals, coal and industrial and agricultural minerals; companies that manufacture mining and mineral processing machinery, equipment and supplies; and engineering and contracting companies and banks that serve the mining industry. The membership includes nearly all the uranium producers and processors in this country.

We write you on behalf of all our members who mine and/or mill uranium. These members include:

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On behalf of all our companies who mine and/or mill uranium, and for reasons hereafter stated, we renew our request that the Nuclear Regulatory Commission (NRC) stay implementation and enforcement of 40 CFR 190.

NRC held a meeting with its uranium mill licensees on November 14, 1980, concerning implementation of 40 CFR 190. A copy of the transcript of that meeting is enclosed. The ostensible purpose of the meeting was to inform licensees of compliance determination procedures and to resolve uncertainties regarding implementation of 40 CFR 190. Although the purpose was to outline a certain and predictable compliance determination procedure, NRC failed to achieve its objective.

The proposed enforcement program is a totally unacceptable, ad hoc amalgam of hastily developed, unreliable, compliance determination procedures, which contain no solid scientific or other decision-making criteria. The many uncertainties that had become apparent both during the administrative proceedings that preceded promulgation of the regulation, and subsequent to its promulgation, were never resolved. For example, the questions evoked by the proposed use of computer models to determine compliance remain unanswered. At the meeting, NRC recognized the difficulties and uncertainties associated with using computer models (e.g. Transcript of November 14, 1980, meeting, p.19, hereinafter "Transcript"), and attempted to diminish the significance of these problems by reducing reliance on the models in the enforcement program. This tactic was a complete surprise and created additional confusion, since uranium mill licensees had previously understood that the computer codes would be the primary method of enforcement. / Even though reliance on the codes has been diminished for now, the NRC retains unbridled discretion

/We note substantial change in the degree of emphasis upon computer codes in the most recent draft document (dated "November 1980") on Compliance Determination Procedures under 40 CFR 190, distributed at the November 14 meeting, compared with the document (dated "October 1980") furnished the American Mining Congress one week earlier. This demonstrates the rapid flux in policy positions regarding implementation procedures for 40 CFR 190, further adding to the uncertainty and confusion. Also compare Mildos Computer Code User Manual, p.i. (May 1980).

to re-emphasize their use at any time in the future. Therefore, the concerns about predictive accuracy, reliability, and the conservative assumptions of the codes remain significant.

The shift in emphasis away from computer models required that additional emphasis be placed upon the only other compliance determination technique: environmental monitoring. The limitations and problems associated with environmental monitoring have been well documented by numerous parties, including the uranium industry and various government agencies. During the administrative proceedings leading to the adoption of the 25 millirem standard, NRC and the industry had commented to the Environmental Protection Agency (EPA) that it was impossible to accurately determine compliance with 40 CFR 190 based upon environmental monitoring. When questioned at the recent meeting regarding the basis for NRC's reversal of its position, the response given was that the present NRC staff "won't attempt to speak for the people who (were) speaking for the NRC three or four years ago." (Transcript, p.31, lns 6-7).

The difficulties and uncertainties associated with environmental monitoring are widely documented. For example, all non-40 CFR 190 sources cannot be eliminated from the environmental measurements with any cognizable degree of statistical confidence. It also seems incongruous to determine background radiation at the mill site merely by measuring radiation at some other "remote" location (NRC Reg.Guide 4.14). Moreover, since NRC has stated that radiation from ground contamination prior to 1980 is not regulated by 40 CFR 190, it is difficult to conceive how the pre-1980 contamination will be distinguished from the post-1980 contamination. In response to a question about this problem, NRC staffer Hubert Miller replied: "I haven't thought that one through . . ." (Transcript, p.30).

Considering the utter inability of the NRC staff to answer any specific questions raised regarding enforcement of the standard, it is clear that NRC cannot determine compliance, or noncompliance, with 40 CFR 190 with any justifiable degree of accuracy. Although NRC staff members were questioned repeatedly regarding what confidence intervals or variability percentages would be applied to measurements, no answer was ever given (Transcript, pp.33-36).

Perhaps one of the greatest areas of uncertainty created by the meeting is whether 40 CFR 190 excludes radon and its daughters from coverage. Although the regulation plainly states that radon and its daughters are excluded, lead-210, a radon daughter, is included in the calculations to determine compliance with the standard. When questioned regarding this inconsistency, a staff member from NRC's Department of Standards stated as follows: "I would suggest that we not give a final answer, because I don't think that there is unanimity of agreement that lead-210 is included in 40 CFR 190" (Transcript, p.27). Mr. Hubert Miller, who chaired the meeting, suggested that "we . . . not give a definitive answer right now . . ." (Transcript, p.28).

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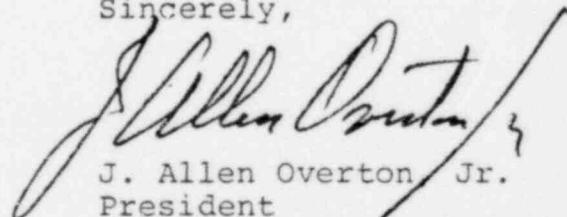
It is in this state of confusion and uncertainty that NRC proposes to put the burden of determining compliance on the licensee (Transcript, p. 37). Without answers to questions concerning how to demonstrate compliance, without resolution to the numerous uncertainties, it is impossible for a licensee to meet that burden.

Nothing but uncertainties exist regarding every single phase of implementation, compliance determination, and enforcement of 40 CFR 190. The questions and ambiguities are so serious, so pervasive, that no enforcement action could be sustained against a licensee. Moreover, NRC staff members stated at least three times that no basis existed to shut down any uranium mills (Transcript, pp. 51, 52, 58). Yet, despite the obvious lack of any solutions for the serious problems with their enforcement program, without even straight answers to their licensee's questions, NRC staff proposes to proceed with business as usual. This is unacceptable. (Transcript, pp. 51, 52, 58).

Given the existence of these circumstances, we renew our request that NRC stay implementation of 40 CFR 190 pending a resolution of the innumerable uncertainties and ambiguities concerning compliance with the regulation. In particular, the stay of implementation should include a delay in imposing additional environmental monitoring requirements. NRC's Regulatory Guide 4.14 imposes substantial environmental monitoring that is not presently required. It would be absurd to impose these additional requirements when present scientific opinion indicates that environmental monitoring is useless in determining compliance with a standard as low as 25 millirems. Additional monitoring requirements should not be imposed until NRC demonstrates that the data generated can be utilized intelligently to determine compliance with 40 CFR 190 with a reasonable degree of accuracy. To do otherwise would be arbitrary and capricious.

The radiation protection standards became effective on December 1, 1980. Accordingly, we request consideration of this request at your earliest convenience.

Sincerely,



J. Allen Overton, Jr.
President