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

CHAIRMAN

February 12, 1990

The Honorable William K. Reilly
Administrator
U. S. Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Reilly:

I am writing to provide the comments of the Nuclear Regulatory Commission (NRC) on Subpart I of 40 CFR Part 61, the Environmental Protection Agency's (EPA's) recently-promulgated National Emission Standard for Radionuclides under the Clean Air Act. Our comments are provided in response to the notice of reconsideration published in the Federal Register on December 15, 1989, in which EPA announced its intent to reconsider the standards in Subpart I based on the adverse impacts associated with EPA regulation of radionuclide air emissions from NRC- and Agreement State-licensed facilities. In accordance with section 307(d)(7)(B), NRC also requests that EPA reconsider the standards in Subparts T and W of 40 CFR Part 61, which were also noticed in final form on December 15, 1989 (54 FR 51654). As you know, NRC strongly believes that dual regulation of NRC-licensed facilities, as would be provided in all three Subparts, is unnecessary from any health and safety or environmental standpoint and is undesirable as a matter of policy.

With respect to Subpart I of EPA's regulation, NRC is fully in agreement with the views already expressed by EPA and the Department of Health and Human Services (HHS) in your joint letter to Congress of November 15, 1989:

> Further, the Administration was advised by many facilities currently regulated by the NRC, including research and testing reactors, medical facilities, and the National Institutes of Health that regulatory schemes that involve unnecessary duplication of compliance and implementation needlessly raise costs and divert resource from needed research and other activities. This could adversely affect patient care at some facilities. . . . Therefore, we believe that the pending revisions to the Clean Air Act should contain a provision to eliminate unnecessary and duplicative authority to regulate radionuclide emissions from NRC-licensed facilities.

For these and other reasons, we believe that Subpart I of the final rule would confer no additional benefits to public health and safety beyond those presently achieved under NRC regulations, but rather would impose unnecessary burdens on hospitals, research facilities, nuclear utilities, and other facilities, with attendant costs that would be passed on to patients and consumers. In the case of hospitals, as EPA and HHS noted in the joint letter, the limitations could even ". . . adversely affect patient care at some facilities." Our more detailed comments on Subpart I are set forth in Enclosure 1 to this letter.

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With respect to Subparts T and W, our request for reconsideration of these Subparts is based on a number of specific implementation problems and uncertainties as well as our more general concerns with regard to unnecessary dual regulation. We note, for example, that in proposing the four complex alternatives in the proposed rule, EPA focused attention on its approach to establishing standards rather than problems and possible impacts associated with specific implementation details. Furthermore, the final rule contains substantive provisions not found in the proposed rule. Therefore, it was impracticable for NRC to raise such objections during the public comment period for the standards in Subparts T and W. Enclosure 2 summarizes the implementation and dual regulation problems that we see with Subparts T and W.

We emphasize that the regulatory scheme already established under the Uranium Mill Tailings Radiation Control Act, including EPA's standards in 40 CFR Part 192, is of central relevance to the standards in Subparts T and W because the scheme duplicates and, in some cases, may preclude implementation of the standards. Indeed, in view of the comprehensive regulatory program already in place for uranium mill tailings, we believe that EPA should defer to this existing regulatory scheme rather than impose additional and unnecessary requirements such as those contained in Subparts T and W.

Moreover, the same considerations that argue for legislation to eliminate duplicative regulation under the Clean Air Act argue with equal strength for EPA to exercise all presently existing authority to minimize duplication to the extent that the law allows. Although we agree that a legislative solution is the most desirable course of action given the legal controversy that attended EPA's efforts to resist dual regulation in the early 1980's, we believe that EPA has considerable latitude, even under current law, to minimize duplication.

In our view, EPA would be fully within its legal authority if it were to provide, on reconsideration of Subparts I, T, and W, that no emission standards are necessary for NRC- and Agreement State-licensed facilities in view of the fact that existing regulation already protects public health and safety with an "ample margin of safety." Indeed, we note that with regard to certain classes of facilities, including high-level waste repositories and coal-fired boilers, EPA has acknowledged that nothing in the D.C. Circuit Court's vinyl chloride decision, NRDC v. EPA, 824 F.2d 1146 (1987), requires EPA to issue emission standards where an ample margin of safety already exists. This was the very point that we made in our comments of May 15, 1989, and which we reiterate once again here.

Finally, should EPA decide to proceed with Subparts I, T, and W, we would be obliged to reevaluate NRC's role in implementation and enforcement of these standards as provided for in the Memorandum of Understanding between our agencies. Consistent with EPA's own findings, we see absolutely no incremental health and safety benefit to proceeding with these regulations and, accordingly, are not in a position to commit our limited resources and personnel to their implementation.

We welcome EPA's recognition that existing NRC regulation provides fully adequate protection of the public health and safety and, for this reason, will continue to press our mutual call for Congress to eliminate duplicative regulation. In the meantime, we strongly urge you to exercise to the fullest extent your present authority to minimize duplicative regulation by revoking the new radionuclide emission standards for NRC- and Agreement State-licensed facilities contained in Subparts I, T, and W.

Sincerely,

Kenneth M. Carr

Enclosures:
1. Comments on the 40 CFR Part 61 Subpart I Rulemaking
2. Comments on the 40 CFR Part 61, Subparts T and W Rulemaking.

cc: Central Docket (A-130)
Environmental Protection Agency
Attn: Docket No. A-79-11

Enclosure 1

NRC COMMENTS ON SUBPART I OF 40 CFR PART 61
IN RESPONSE TO EPA'S NOTICE OF RECOMMENDATION

1. The EPA assertion that most Nuclear Regulatory Commission (NRC) licensees will be able to use the simple screening levels to demonstrate compliance with the NESHAP in Subpart I appears to be incorrect. The final standard will present fundamental problems for many non-fuel cycle licensees, such as manufacturers who currently have radionuclide possession limits in non-sealed source form that exceed the Environmental Protection Agency (EPA) annual possession quantities in Table 1 of Appendix E. (Licensees who possess less than the Table 1 quantities per year are deemed in compliance.) The estimated number of commercial facilities subject to this rule approaches 15,000 when Agreement State licensees are included. NRC licensees may request several hundred license amendments simply to lower or change the authorized possession limits in order to provide a clear means of demonstrating compliance with the EPA standards. Currently, NRC does not routinely impose annual possession limits on licensees. Although the 10-millirem/year committed effective dose equivalent (EDE) limit is considered an achievable limit for most types of facilities, many of NRC's materials licensees do not have the necessary environmental monitoring nor analytical capability to demonstrate compliance. Many licensees will have to use the most complicated level of the COMPLY code (level 4) because the initial levels use unrealistically conservative assumptions that severely overestimate doses.

2. In the case of medical and hospital licensees, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) could cause considerable difficulties for hospitals that maintain on-going programs to investigate new uses of radiopharmaceuticals for improved medical techniques. The restrictions on yearly possession limits to qualify for simple demonstrations of compliance could encourage licensees to eliminate such programs and result in reduced health care simply to avoid the problems and cost associated with demonstrating compliance.

3. A major potential impact on the programs of NRC, Agreement States, and all categories of licensees is compliance with the facility construction and modification requirements of Subpart A of 40 CFR Part 61. (Compliance with Subpart A is required of all facilities subject to all new NESHAPS, as they are issued, unless specifically exempted.) EPA has provided a threshold dose increment of 0.1 millirem/year for requiring advance EPA approval of construction or modification, provided the facility is in compliance with Subpart I and performs and retains an evaluation to demonstrate that the incremental impact is less than the 0.1-millirem/year threshold. This is an extremely small increment and may be of little

value in view of the uncertainties in estimating doses at this level and the penalties associated with noncompliance under the Clean Air Act. Facilities such as hospitals and universities may have to request numerous and frequent EPA approvals of modifications to release points because of the number and diversity of buildings, ventilation-release points, incinerator stacks, and fume-hood exhausts associated with the use of radioactive materials at these facilities. In addition, areas such as ore-storage pads and process ponds are part of the facilities, so that licensees, such as rare-earth processors, may have to obtain EPA approval of construction or modifications associated with these parts of their operations as well. Hundreds of licensees may have to file applications, beginning on the effective date of the rule. NRC and Agreement States may have to review applications for license amendments to accommodate the EPA permitting process and inspect the modifications to, or new construction of, facilities precipitated by EPA's new standards. Even if NRC or State licensing amendments are not required, additional review and inspection resources may be needed to assess changes in facilities or operating procedures and confirm continued compliance with NRC and Agreement State requirements.

4. Although currently operating licensed uranium conversion plants and uranium processing and fabrication facilities can meet the 10-millirem/year EDE limit, it is not realistic to expect that these licensees will be able to demonstrate compliance using the January 1989 version of the COMPLY code. To establish compliance with 40 CFR Part 190, these licensees were required to install and operate continuous air-monitoring stations at nearby sites where members of the public are located and to undertake extensive and costly analyses of the samples obtained. This was done in part because of the large uncertainties in dispersion modeling and to enable more accurate dosimetry. Under the new NESHAP for radionuclides in Subpart I, in many cases it will be necessary for licensees to rely on alternate compliance models that use additional or different data and assumptions. Case-by-case approvals of such alternate models will pose additional burdens on both the licensees and the implementing regulatory agencies, thus diverting resources from activities of greater health and safety benefit.

5. The applicability of the standard to temporary work sites and outdoor sites is unclear. Section 61.100 states that the standard applies only to licensed facilities, and 61.101 defines facility as "all buildings, structures, and operations on one contiguous site." In many cases, however, licensed material is authorized for use at temporary and outdoor job sites. In outdoor tracer studies, for example, liquid radioactive material is released to a well to determine hydrogeologic characteristics. These types of activities cause airborne emissions, as the tracers containing the radioisotope are allowed to evaporate or disperse into the atmosphere. Because there is no specific release point at which to measure the concentration of the radionuclide, it is unclear how a

licensee is to determine if these activities are in compliance with the emission standard. Furthermore, there are no criteria in the January 1989 COMPLY code which allow for these types of licensees to demonstrate compliance.

6. NRC endorses EPA's attempt to maintain consistency with NRC's existing regulatory program by referencing several Regulatory Guides. The standard, however, incorporates dated versions of several NRC Regulatory Guides directly into the implementation section of the rule, thereby limiting the licensee's use to those versions of the Guides and not allowing use of revised Guides without additional rulemaking by EPA. Furthermore, Regulatory Guides, as used by NRC, are not intended as requirements but rather as one acceptable approach for demonstrating compliance with NRC requirements. Therefore, it is inappropriate for EPA to incorporate them by reference in EPA regulations.

7. Subpart I provides for dual regulation by NRC or Agreement States and EPA of both operating and closed low-level waste sites. The EPA-required compliance procedures are not sufficiently clear to estimate emissions from waste packages and disposed waste with confidence. (Use of the computer code package CAP-88 is mentioned in the preamble, but not described or referenced in the rule. NRC is not familiar with this package of codes.) Although site-specific alternatives to the COMPLY code have been included, only site-specific implementation will determine whether the standard will cause significant problems in demonstrating compliance. Such regulatory uncertainties are also potentially disruptive to development of new disposal facilities by January 1, 1993, in accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985. These facilities are needed to minimize reliance on indefinite storage of wastes in temporary facilities.

8. The significance of the differences in the exposure limits in Subpart I and existing standards have not been determined for low-level waste sites and uranium mills. Current limits for new low-level waste sites are contained in NRC's regulations in 10 CFR Part 61. Limits for exposures, other than those from radon, for the uranium fuel cycle, including uranium mill facilities, are contained in 40 CFR Part 190. In both cases, the annual dose limits are 25 millirem to the whole body, 75 millirem to the thyroid, and 25 millirem to other organs. The new Subpart I would establish an annual effective dose equivalent (EDE) limit of 10 millirem, of which only 3 millirem can be from iodine. Although EPA concluded that the limits in Subpart I and 10 Part 61 and 40 CFR Part 190 are essentially equivalent, the practical implications and significance of the differences between the standards have yet to be determined. The significance will be better understood once the new International Commission on Radiological Protection (ICRP) methods are applied to radionuclides of interest at uranium mills and low-level waste sites, and EPA's final implementation documents and computer codes are examined. Using the January 1989

compliance documents, operating mills would likely not be able to comply with the dose limits of Subpart I because of the conservative assumptions used in the COMPLY code. Regulatory agencies and licensees will have to deal with two procedures for determining doses without any apparent practical benefit in risk reduction.

9. The implementation of EPA's standard requires a continual awareness by NRC licensees of locations of the maximally exposed individual from inhalation, immersion, and ingestion pathways. For power and research/test reactors, industrial and health care facilities, and other non-reactor licensees, this requirement constitutes a moving target unless compliance is conservatively demonstrated at the facility boundary. Power reactor personnel currently maintain an awareness of receptor locations in each sector in the vicinity of the plant and are thus somewhat accustomed to living with such moving targets. Research and test reactor personnel, on the other hand, do not typically maintain an awareness of distances to receptor locations in each sector; such a requirement would potentially pose a new burden on non-fuel cycle licensees to maintain an awareness of transient receptor locations.

10. Section 61.103 requires the use of the EPA COMPLY code to determine whether the limits of Section 61.102 have been met. Certain alternative methods are allowed. Neither the COMPLY code nor the cited alternative methods are currently in use by NRC licensees. For example, if power reactor licensees were to switch to EPA-mandated codes and revise their Offsite Dose Calculation Manuals (ODCMs) accordingly, the ODCM changes would need to be reviewed to ensure that NRC requirements continued to be met. Licensees could, however, maintain a dual system, using both their current NRC-reviewed ODCM methodology as well as EPA's new methodology. Even this, however, would require that NRC staff be somewhat familiar with the above-mentioned EPA code/methods to be able to understand certain licensee actions which may derive from their use. In addition, maintenance and use of two separate methodologies and procedures for off-site dose calculations could cause avoidable confusion for licensees, regulatory agencies, and the public.

11. Nuclear power reactor licensees have been required for many years by 10 CFR Subsection 50.36a to report effluent releases semi-annually to NRC. Subsection 61.104(a) requires annual reports of effluent releases to EPA, plus additional details on emissions that do not seem relevant to an ongoing demonstration of compliance. Facilities not in compliance with 40 CFR Section 61.102 are required to report to EPA on a monthly frequency. NRC requires power reactor licensees to submit similar reports via 10 CFR Part 50, Appendix I. Such duality of reporting appears to have no benefit. Consistent with the Paperwork Reduction Act (44 USC 3510(a)), Federal agencies should cooperate with each other and share reports to reduce the burdens on the regulated community. Since emission reports are already required by NRC, EPA should not impose new reporting and data collection requirements. EPA should rely on the existing regulatory framework.

12. Section 61.107 requires emissions monitoring at all release points having the potential to exceed 1 percent of the Section 61.102 limits. Since "potential" could refer to any situation with a non-zero probability, there are many points at facilities such as nuclear power plants or large processing facilities that could meet this broad criterion. These monitoring activities and associated record-keeping would pose a significant additional burden on licensees and on NRC and Agreement States, who would review these additional monitoring data during inspections.

13. Subsection 61.107(c)(1) allows nuclear power plants to determine emissions of radioactive materials in conformance with Effluent Technical Specifications. NRC's Technical Specification Improvement Program, through Generic Letter 89-01, is allowing licensees to place these specifications into licensee-controlled documents, rather than in Technical Specifications, to reduce administrative burden on both NRC and the licensees. Therefore, the provision in Subsection 61.107(c)(1), by referencing only Technical Specifications, may not be available to many licensees.

14. Based on the discussion in the proposed and final rule notices, EPA may not have given due weight to the potential inequity created by listing and establishing standards for radionuclides as a single pollutant. NESHAPs for chemical pollutants have been developed for specific elements or compounds with no comparable restriction on the risk to the public from the total exposure to all nonradiological pollutants.

    NRC agreed with the listing of radionuclides as a single pollutant in the early 1980's. It should be noted, however, that use of this collective approach for limiting radionuclide emissions may result in more stringent risk levels for radiological pollutants. Certainly it is reasonable to conclude that higher total risks accrue to the public from facilities which release maximally allowed quantities of more than one pollutant listed under the NESHAPs on a chemical-by-chemical basis than from facilities that emit a single pollutant.

    This additional conservatism inherent in the collective approach for radionuclides provides additional support for EPA to conclude that the existing NRC and Agreement State regulatory frameworks already provide an equivalent level of protection to that envisioned under EPA's new rule.

Enclosure 2

NRC COMMENTS ON SUBPARTS T AND W OF 40 CFR 61 IN SUPPORT OF A PETITION FOR RECONSIDERATION TO EPA

The Nuclear Regulatory Commission petitions EPA to reconsider the final standards in Subparts T and W of 40 CFR Part 61 because it was impracticable to raise objections to EPA's standards in these subparts before they were promulgated and because these objections are of central relevance to the outcome of the standards. EPA's final standards in Subparts T and W of 40 CFR Part 61 were issued on October 31, 1989, and noticed in the Federal Register on December 15, 1989, at 54 FR 51654. The final rule contains substantive provisions not found in the proposed rule that was noticed in the Federal Register on March 7, 1989, at 54 FR 9612. Therefore, it was impracticable for NRC to raise such objections during the public comment period.

NRC's comments are of central relevance to the standards in Subparts T and W because they illustrate how the comprehensive regulatory scheme already established under the Uranium Mill Tailings Radiation Control Act duplicates and, in some cases, may preclude implementation of EPA's new standards in Subparts T and W of 40 CFR Part 61. The standards are of significant interest to NRC and Agreement States because they will require the agencies to spend resources to review and approve activities that are already adequately regulated under the comprehensive regulatory scheme. Therefore, under Section 307(d)(7)(B) of the Clean Air Act, NRC petitions EPA to reconsider the standards in Subparts T and W based on the comments provided below.

Subpart T: Radon Emissions Standards for Disposal of Uranium Mill Tailings

1. Many sites will not be able to comply with the two-year deadline to stabilize the mill tailings because of physical and legislative constraints. The final standard in 40 CFR 61.222 requires that uranium mill tailings impoundments be closed within two years after the effective date of the standards or after cessation of operations, whichever is later. Most licensees at active mills under Title II of UMTRCA will not be able to comply with this deadline because the tailings will not be sufficiently dry and stable to allow placement of earthen covers to reduce radon emissions and ensure long-term stability. In addition, DOE may not be able to comply with the deadline because remedial action at the inactive tailings sites under Title I of UMTRCA is proceeding according to a Congressionally-approved schedule for completion in 1994, subject to the adequacy of Federal appropriations. Consequently, EPA will need to negotiate compliance agreements with licensees and DOE to establish alternate schedules for compliance. The negotiations will also need to include NRC and Agreement States as responsible regulatory agencies for the active uranium mills and as concurring agencies for the remedial actions. This complex regulatory process is unnecessarily burdensome

because the licensees and DOE are already in the process of stabilizing the uranium mill tailings and existing regulations are fully adequate to ensure protection of human health and the environment. In addition, the compliance negotiations could also impede and delay some remedial and reclamation activities because of EPA's requirement for pre-approval of cover designs and the duplicative, but not necessarily consistent, regulatory framework established by the standards in Subpart T.

2. The final standards in Subpart T generally duplicate existing EPA and NRC requirements under the Uranium Mill Tailings Radiation Control Act (UMTRCA) for uranium mill tailings disposal sites. The standards do not provide an exemption for filing applications under Subpart A of 40 CFR Part 61 for facility construction and modifications. Consequently, the Department of Energy (DOE) and uranium mill licensees will have to obtain prior approval by EPA for all cover designs and modifications. As a result of the duplicative nature of EPA's Subpart T standards with NRC and EPA standards already in place, both EPA and NRC will have to review and approve the same designs and design modifications, thus doubling the administrative resources necessary to ensure that covers for uranium mill tailings are adequately designed and constructed. In addition, it is unclear whether designs that are in process or under construction also require EPA's prior approval. Such a requirement would delay and disrupt current stabilization efforts by licensees and DOE. The delay and disruption is not justified given that EPA's standards in Subpart T do not enhance protection of the public and the environment beyond that attained under the current regulatory framework. In fact, they may actually result in decreased protection by slowing down or stopping work already in progress to stabilize the tailings.

3. EPA's final standards in Subpart T may restrict the flexibility to approve site-specific alternatives in accordance with UMTRCA and the Atomic Energy Act. The final standards reference specific subparagraphs of EPA's standards in 40 CFR Part 192. However, they do not explicitly provide for site-specific alternatives to the referenced standards that are provided for in Section 84c of the Atomic Energy Act or in Subpart C of EPA's standards in 40 CFR Part 192. NRC's authority to approve such alternatives for Title II sites was upheld last year by the Tenth Circuit Court of Appeals (EDF v. NRC, 866 F.2d 1269(1989)). Agreement States may also approve such alternatives provided that NRC concurs. Similarly, EPA's standards in Subpart C of 40 CFR Part 192 provide for supplemental standards in lieu of the primary standards in Subparts A and B for Title I sites. Therefore, it appears that EPA's standards in Subpart T of 40 CFR Part 61 under the Clean Air Act conflict with EPA's standards in 40 CFR 192 under UMTRCA, as well as the Atomic Energy Act itself, in that they may limit the flexibility provided earlier by Congress and EPA.

Subpart W: Radon Emissions Standards for Operating Uranium Mill Tailings

4. EPA standards in Subpart W require the NRC to do something that NRC does not have the authority to do under the Atomic Energy Act. The standards in 40 CFR 61.252(b) require operation of uranium mill tailings impoundments in accordance with the requirements of 40 CFR 192.32(a) as determined by the NRC. In Agreement States under Section 274 of the Atomic Energy Act, the States regulate uranium mills in lieu of Federal regulation by NRC. Thus, the Agreement States should determine that impoundments are operated in accordance with 40 CFR 192.32(a). However, EPA did not include a provision for determinations by Agreement States or define NRC to include Agreement States, as it did in Subpart I of 40 CFR Part 61. Therefore, EPA's standards in Subpart W require NRC to make a determination in Agreement States that NRC does not have the authority to make. The lack of such NRC authority has no practical impact on safety, however; NRC already requires Agreement States to implement measures to assure that tailings piles comply with EPA's 40 CFR Part 192 requirements, and monitors that implementation through its reviews of Agreement State programs.

5. EPA's final standards under Subparts W and A of the 40 CFR Part 61 duplicate aspects of EPA's and NRC's existing regulatory requirements and framework for management of active uranium mill tailings sites. Under Subpart A, uranium mill licensees will have to seek prior review and approval by EPA of the design, construction, and modification of uranium mill tailings impoundments. NRC already has a comprehensive regulatory program for uranium mills, including design and environmental reviews, licensing of the mill facilities and impoundments, and inspection of the construction, operation, and closure of the facilities and impoundments. Thus, EPA's new standards in Subparts W and A duplicate a portion of NRC's comprehensive framework, which implements EPA's requirements in 40 CFR Part 192. The additional administrative and economic burden on licensees and NRC is not justified because EPA's standards in 40 CFR Part 61 do not provide any significant incremental enhancement in the protection of the public and the environment beyond that achieved under the current regulatory framework.

6. EPA's final standards in Subpart W may restrict the flexibility to approve site-specific alternatives in accordance with UMTRCA and the Atomic Energy Act. The standards in 40 CFR 61.252 specifically reference subparagraph 192.32(a) in EPA's standards in 40 CFR Part 192. However, they do not explicitly provide for site-specific alternatives to the referenced standards that achieve a level of protection equivalent to, to the extent practicable, or more stringent than, NRC's requirements in 10 CFR Part 40 and EPA's requirements in 40 CFR Part 192 in accordance with Section 84c of the Atomic Energy Act. NRC's authority to approve such alternatives for Title II sites was upheld last year by the Tenth Circuit Court of Appeals (EDF v. NRC, 866 F.2d 1269 (1989)). Agreement States may also

approve such alternatives provided that NRC concurs. Therefore, it appears that EPA's standards in Subpart W of 40 CFR Part 61 under the Clean Air Act conflict with NRC's requirements in 10 CFR Part 40 under UMTRCA, as well as the Atomic Energy Act itself, in that they may limit the flexibility provided earlier by Congress to allow site-specific alternatives to NRC's and EPA's requirements.

7. EPA's standards in Subpart W are unclear on whether EPA intends to duplicate NRC's site-specific implementation responsibilities under UMTRCA and the Atomic Energy Act. The final standard in 40 CFR 61.252(c) requires that licensees operate uranium mill tailings piles in accordance with EPA's requirements in 40 CFR 192.32(a). However, EPA has not specifically provided for a determination by NRC or Agreement States that pile operations comply with 192.32(a). Thus, the standard is ambiguous on whether NRC and Agreement States determine compliance (consistent with the "regulatory agency" concept in 192.31(g)) or whether EPA has provided for itself a site-specific regulatory role for groundwater protection. The standards referenced in 192.32(a) are the primary standards for design, operation, and groundwater protection for active uranium mill tailings impoundments; they have been incorporated into NRC's conforming requirements in 10 CFR Part 40, Appendix A, and are actively being implemented and enforced by NRC and Agreement States. EPA implementation and enforcement of these standards would unnecessarily duplicate the comprehensive regulatory programs for uranium mill tailings management that have already been established by NRC and Agreement States. In addition, such duplication could result in implementation and enforcement actions that are inconsistent with NRC and State actions under identical requirements, which could actually impair current efforts to protect the public and the environment from hazards associated with uranium mill tailings at active sites.