



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

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June 30, 1981



Mr. Ronald K. Peterson  
Assistant Director for Legislative  
Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Peterson:

This is in response to your request for the Nuclear Regulatory Commission's views on the Department of Energy's proposed bill entitled the "Residual Radioactive Material Control Act." The purpose of the bill is to protect the public health, safety and welfare from the potential health hazards and economic hardships associated with non-federally owned or leased sites that are radioactively contaminated as a result of their use for work under contract with the Manhattan Engineer District or Atomic Energy Commission. The bill's purpose would be implemented by authorizing the Secretary of Energy to either take remedial actions to decontaminate such sites or acquire them if necessary for the protection of public safety or prevention of windfall profits. DOE would also be authorized to enter into an agreement with a state for the purpose of acquiring a site for the disposal of residual radioactive material from a contaminated site, and to transfer that site to the state if the state agrees to assume custodial responsibility.

The bill would also authorize the Administrator of the Environmental Protection Agency to develop, in consultation with DOE, generally applicable health and environmental standards for residual radioactive materials at decontaminated sites which are to be released for unrestricted use and at disposal sites acquired by DOE.

Regarding the NRC, the bill would establish licensing and regulatory authority over DOE's or a state's possession of radioactive material at a disposal site, and would require DOE to consult with NRC regarding DOE's compliance with EPA's standards.

Finally, the bill would direct DOE to report to Congress on other sites which are radioactively contaminated by their prior use for commercial processing and utilization of uranium and thorium ores or their daughter products including radium, but not under contract to the Manhattan Engineer District or the Atomic Energy Commission. DOE would also be authorized to perform radiological surveys and evaluations to radiologically characterize those contaminated sites and to determine the need for remedial action at such sites.

DOE submitted an earlier version of this bill to OMB on May 15, 1980; NRC staff comments were forwarded to OMB on June 10, 1980. The present bill incorporates several changes in response to those comments. However, DOE rejected some NRC comments. The NRC supports the general thrust of the proposed bill, but believes that it should be amended to include the points raised below.

The NRC believes that the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) provides an example of the appropriate scope of NRC's regulatory authority in a program for the clean-up of radioactive contamination. UMTRCA authorizes the Secretary of Energy to conduct a remedial action program to prevent or minimize hazards to public health, safety and welfare from abandoned uranium mill tailings piles. The NRC has a substantial role in several aspects of that program. The Secretary must consult with NRC on the designation of processing sites that he determines require remedial action, 42 U.S.C. 7912(a)(1), and consult with the NRC on the boundaries of each site, 42 U.S.C. 7912(a)(2). The Secretary must obtain the NRC's concurrence before: (1) entering into an agreement with a state, 42 U.S.C. 7913(e); (2) acquiring a designated processing site from a state, 42 U.S.C. 7914(a); (3) removing residual radioactive material from a processing site, 42 U.S.C. 7914(b)(1); (4) selecting and performing remedial action at a processing site, 42 U.S.C. 7918(a)(1); and (5) determining that remedial action is completed at a reprocessing site, 42 U.S.C. 7914(f). Each cooperative agreement between the Secretary and a state shall provide the NRC permanent right of entry to a site at any time. 42 U.S.C. 7913(d).

The NRC believes that it should have similar regulatory authority regarding this proposed program. Regarding clean up, the NRC should be involved in setting remedial action standards for releasing sites for unrestricted use. The NRC made this recommendation last year; DOE rejected it, contending that it has the technical capability to establish site-specific standards for unrestricted use with the concurrence of EPA. In our view, the issue is not technical capability, but the need for independent review by an expert agency which has the experience to determine whether a clean-up program will ensure protection of the public health and safety. DOE appears to partially recognize this principle by stating that NRC will be consulted in all remedial action and certification activities. However, the bill would provide the NRC only limited consultation regarding DOE's compliance with EPA's standards. The NRC believes that such consultation is inadequate in view of the potential hazards to public health and safety, and recommends that the bill be amended to provide for NRC authority similar to that provided by UMTRCA.

Regarding disposal sites, the NRC believes it should be involved in the designation of sites and the setting of standards for such sites. The NRC made this recommendation last year; DOE responded that because the NRC would license disposal sites it would be involved in the setting of standards for such sites and would be consulted on their designation. The NRC believes that the bill should be amended to include explicitly such authorities regarding disposal sites, and that those authorities should be similar to NRC's authorities under UMTRCA.

The NRC also believes that the Administrator of the Environmental Protection Agency should consult with the NRC as well as DOE in promulgating standards, criteria, or guides for the protection of the public health and safety and the environment from hazards associated with residual radioactive materials at remedial action sites. Such consultation between NRC and EPA would be consistent with the proposed authority for NRC licensing of disposal sites and with the recommended expanded scope of NRC regulatory authority discussed above. UMTRCA provides that EPA shall consult with the NRC and DOE before promulgating standards for the protection of public health and safety from hazards associated with uranium mill tailings. 42 U.S.C. 2022c(1).

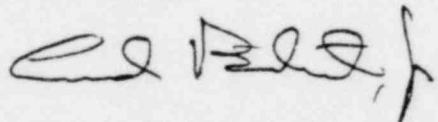
The NRC also believes that serious consideration should be given to expanding the scope of the program to include other contaminated sites. The risk to public health and safety presented by contaminated sites depends on their levels of contamination, not on whether the contamination resulted from licensed or unlicensed activities or the current ownership status of the site. Accordingly, a comprehensive program to protect public health and safety should include any radioactively contaminated site for which no person can be identified to be legally required to clean up that site. At least, the bill should be amended to modify the exclusion of federally owned sites in the definition of remedial action sites in Section 101(7)(a). This exclusion would eliminate from the program sites which are federally owned but not owned by DOE, e.g. the Weldon Spring site in St. Charles County, Missouri which was contaminated as a result of the processing of uranium ores for the AEC and is now under control of the U.S. Army. The exclusion of such a site is not consistent with DOE's intention to clarify its authority to eliminate health hazards from contaminated sites over which DOE does not currently have authority.

As a final comment, we have not budgeted for and do not have the resources necessary to carry out the licensing effort required by the Bill. Depending on what NRC's role will be as discussed above, and on the number of licensing cases involved, our resources requirements could be significant. For example, each case involving NRC preparation of an Environmental Impact Statement could require as much \$200,000.

Finally, as a technical matter, we note that Section 108(b) should be amended to refer to Chapters 6, 7 and 8 of the Atomic Energy Act of 1954, as amended (Act) because the present references to Sections 51, 61 and 81 of the Act are too limited.

Thank you for this opportunity to comment on this draft legislation.

Sincerely,



Leonard Bickwit, Jr.  
General Counsel