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NUCLEAR REGULATORY COMMISSION
10 CFR Part 40
RIN: 3150-AC56
Custody and Long-Term Care
of Uranium Mill Tailings Sites

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OFFICE OF SECRETARY
DOCKETING & SERVICE

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue general licenses that would 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. An Advance Notice of Proposed Rulemaking was issued on August 25, 1988.

DATE: Comment period expires **APR 23 1990** Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

Comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis can be examined at: The NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

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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.

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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, 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 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. These proposed 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) in which the NRC requested comments on this proposed rulemaking and three specific topics. No comments were received specifically addressing these topics.

II. Proposed Action

The proposed 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 proposed 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 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), 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 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.

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 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.)

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 site each year to confirm that the site's conditions are as expected. The 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. 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 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 sites, we are proposing to allow annual reports which will cover all sites under their jurisdiction. Any site where unusual damage or disruption is discovered during the inspection, however, would require a preliminary site 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 only deals with Title II licensees. The long-term care licensee for Title I should have comparable reporting requirements, which will be specified in the Long-Term Surveillance Plan.

There are some differences in requirements for sites located on Indian lands. For Title I sites, the ownership of that site will remain with the tribe. The NRC and DOE have generally agreed that sites on Indian lands should be handled in the same manner as other Title I 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 sites are on Indian lands.

For Title II 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, UMTCA was not explicit as to which Federal agency is responsible for the 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 sites on a case-by-case basis.

Both §40.27 and §40.28 allow for potential future uses of the sites. As provided in UMTCA, 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 proposed rulemaking would provide 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. Such 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

This Act was signed by the President on November 5, 1988, and provides among other things an extension of the UMTCA 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 EPA ground water standard, compliance with the ground water protection provisions at the disposal site would 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 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 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 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 this Act, the NRC is planning to allow licensing of Title I sites to occur in two phases, if needed. The first phase 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 Act requires this to be completed prior to September 1994. The second phase, 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 Act itself did not address the potential delay of licensing Title I sites due to the ground water provisions in EPA's proposed standards requiring mandatory post-closure performance monitoring. NRC's options ranged from a case-by-case use of EPA's supplemental standards provisions to exempt such 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 phased 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. Since 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 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 (DOE) 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 are currently being finalized by EPA (see the previous section for more details). DOE continues to perform remedial action at the inactive 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 to 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 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 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 reclamation of the site has been accomplished in accordance with the approved plan may be accomplished in two phases. The Uranium Mill Tailings Remedial Action Amendments Act of 1988 allows for a two phased approach for Title I sites. The Act will allow DOE to do all remedial actions, other than ground water restoration, for the first phase of closure and licensing. The second phase, 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. 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 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 phases as discussed above and in the section on the Act. There is no termination date for the general license.

In the Advance Notice of Proposed Rulemaking issued on August 25, 1988, the NRC indicated the intent to publish a Federal Register notice upon receipt of the LTSP and provide a public meeting to inform the local public of the future plans for the site and to provide an opportunity for public comments. The NRC has further evaluated this procedure and recognized that opportunity for public involvement will be more effective at an earlier stage. 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 receives the LTSP. In this phase DOE and NRC periodically inspect the 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 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

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 site has been closed in accordance with applicable standards; and (4) 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 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 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 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 site are limited to subsurface rights, whereas, a Title II 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.

5. The determination that Title I sites have been reclaimed may be done in two phases, whereas the determination 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.

Ten of the 19 conventional mills licensed by NRC have made corporate decisions to no longer use the sites or keep them in standby condition. They plan to decommission them and are seeking license termination. Activities at these 10 sites are in various stages of design, planning and decommissioning.

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

DOE, or the appropriate State, will submit a 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 sites will allow a two-phased approach as provided in the Uranium Mill Tailings Remedial Action Amendments Act of 1988. The Act will allow DOE to do all remedial actions, other than ground water restoration, for the first phase of closure and licensing. The first phase includes any performance or design features necessary to satisfy ground water protection standards, except for ground water restoration. The second phase, 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 UNTRA 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 a site LTSP for Title I 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 site conditions.
2. 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 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 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 inspections: Phase I, Phase II (not to be confused with the two phases of remedial action when ground water restoration is required), 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 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 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.

Initial surveillances should include the acquisition and interpretation of aerial photography. The principal purposes of aerial photography are to aid inspectors in the field and to provide a permanent, visual record of site conditions. Color infrared stereo photos, high oblique prints, and low oblique, natural color photographs should be taken at the completion of remedial action. Follow-up aerial photography would only be done if the Phase I or Phase II inspections identify a need for this.

The LTSP should also describe the procedures the long-term licensee would follow if contingency or emergency repairs were needed at the 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 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)¹.

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.

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 reflect site-specific additional items, but will not affect the charge to the existing licensee).

VI. Future Uses of the Disposal Site

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

VII. Response to Issues for Comment

The Advance Notice of Proposed Rulemaking identified several areas of uncertainty and requested comments on the following topics:

1. DOE's ability to complete the Title I program considering the

1990 legal limit.

2. EPA's proposed amendments of 40 CFR Part 192 concerning ground water protection for Title I sites.
3. Institutional matters associated with reclaimed sites on Indian land.

The NRC did not receive any comments specifically addressing these topics. However, the uncertainty associated with the first issue was resolved with the passage of the Uranium Mill Tailings Remedial Action Amendments Act of 1988. See the earlier discussion on this law for more details.

VIII. Comments on the Advance Notice of Proposed Rulemaking

The Commission received six (6) letters commenting on the advance notice. Copies of those 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 St. NW, Washington, DC. Comments were received from an environmental group, an industry representative, the Department of Energy, and from three States. From the six letters 15 individual comments have been analyzed. The most significant are summarized below.

There seemed to be some misunderstanding by one commenter that the long-term care licensee might, in essence, require the existing licensee to prepare the LTSP during site closure activities, thereby impacting the private sector. NRC agrees with the commentor that consultation between the existing licensee and the long-term care licensee is appropriate during site closure activities. However, the Commission does not intend for the existing licensee to prepare the LTSP. Instead, the LTSP should be prepared by the custodial agency which becomes the long-term care licensee once NRC accepts the LTSP, the specific license is terminated, and site custody has been transferred. The custodial agency should prepare the LTSP based on input from the existing licensee's reclamation plan for the site, including the evaluation of long-term surveillance needs. This approach provides a mechanism to integrate the reclamation program with long-term surveillance and transfers important site

information to the custodial agency. NRC encourages consultation between the existing licensee and the custodial agency about post-closure surveillance. Accordingly, NRC has changed the phrase "no impact" to "no significant impact" because such consultation is appropriate and desirable and requires some level of effort on the part of the existing licensee. NRC does not consider this effort to be significant, however, because it is a part of other licensee activities required to reclaim the site and terminate the existing license in accordance with existing NRC requirements in Appendix A to 10 CFR Part 40.

One commenter noted that the term "remedial action plan" may not be appropriate for Title II sites since 10 CFR Part 40 refers to a "closure plan." We agree and have made appropriate changes. Remedial action plans refer to Title I sites only.

Two commenters wanted to know about potential uses of a disposal site after reclamation or closure is completed. The NRC is not aware of any disposal sites where a future use is specifically planned. One of the commenters listed several potential uses, such as agricultural, recreational, or deep subsurface mining. Because of the site specific nature of such uses and their potential impacts any proposed use will be reviewed on a case-by-case basis.

The Department of Energy expressed concern that the proposed rule would require an LTSP at sites where contaminated material has been removed and, if applicable, ground water cleanup achieved. We agree that an LTSP (or a license) for these sites is not appropriate and never intended for this to be the case. We have added clarifying language. It should be noted, however, that the NRC would in no case concur with completion of remedial action unless the DOE had complied with the EPA cleanup standard at the processing site, even if the tailings were disposed elsewhere.

IX. Petition for Rulemaking

On December 5, 1980, the NRC received a petition for rulemaking submitted by the Sierra Club (PRM-40-23). An amendment to this petition was received by the NRC on March 21, 1983. The original petition requested that the NRC amend

its regulations to license the possession of byproduct material at inactive tailings sites (Title I). The petitioner proposed that the NRC take the following regulatory action to ensure that public health and safety and the environment is adequately protected from the hazards associated with byproduct material:

1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.
2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.
3. Or alternatively, conduct a rulemaking to determine whether a licensing exemption of these sites or the byproduct material derived from the sites constitutes an unreasonable risk to public health and safety.

In the 1983 amendment, the petitioner requested that, in the event that NRC denied the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requested that the NRC ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

Whether the original petition is granted or not, the petitioner also requested that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act (42 U.S.C. 2111), comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.). In the alternative, the petitioner suggested that NRC extend the coverage of the requirements in 10 CFR Part 40, Appendix A, which are now applicable only to licensed byproduct material, to byproduct material not

subject to licensing. In addition, the petitioner requested that NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

One of the purposes of this proposed rulemaking is to provide a licensing procedure for long-term care of inactive sites. Although this is not what the petitioner requested, the end result directly addresses the petitioner's concerns. Inactive sites will be licensed and will be managed to ensure their long-term integrity to protect public health and the environment.

Another concern of the petitioner is that until DOE completes remedial action, the residual radioactive material will be unregulated. While it is true that the sites are not regulated by NRC prior to completion of remedial action, the sites are managed by DOE under a comprehensive environmental, health, and safety program similar to the types of programs required by NRC under 10 CFR Part 20. This program includes the types of activities requested by petitioner, including monitoring and other actions necessary to protect public health and safety and the environment. In addition, the remedial action program operates under a series of State laws and regulatory programs intended to protect human health and the environment. Although the Commission does not have the authority to approve DOE's environmental, health, and safety program for these sites, NRC has reviewed and commented on the adequacy of the program and DOE has considered these comments in the design and implementation of its program.

The Commission intends to respond more fully to the petitioner's request by the time the rulemaking described in today's notice is final.

X. 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 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.

Because of the potential uncertainties of implementation, compliance agreements between EPA and States, DOE, or licensees, and potential regulatory changes, the NRC has added to the proposed rule a proposed requirement to report governmentally directed activities to NRC prior to taking any actions under the general license.

XI. 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, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The proposed rulemaking will establish general licenses for long-term care of uranium or thorium mill tailings 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 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.

XII. 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.

XIII. Regulatory Analysis

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

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

XIV. 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, if adopted, will 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.

XV. Backfit Analysis

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

XVI. List of Subjects in 10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, 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. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is proposing 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, 86 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. 161o, 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 disposal and long-term care of byproduct 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. 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, paragraph (t) is added to read as follows:

§40.4 Definitions.

* * * * *

(t) "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.

6. In §40.7, paragraph (f) 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, byproduct material, and residual radioactive material are of two types: general and specific. 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.

(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.

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

§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 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, for remediated uranium mill tailings 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 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 site. 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 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, 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 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. If the site has continuing aquifer restoration requirements, then the licensing process will be completed in two phases. The first phase includes all items other than ground water restoration. Ground water monitoring may still be required in this first phase 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 phase.

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission, 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 site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; any such changes must 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 site, even if the action is required by another State or Federal agency.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, 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 such use will not disturb the residual radioactive materials or that such materials will be restored to a safe and environmentally sound condition if they are disturbed by such 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 such actions are to be undertaken, the licensee shall justify to the Commission which requirements from these Parts apply for such actions and comply with the appropriate requirements.

§40.28 General license for long-term care of uranium or thorium byproduct materials 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 site is located. The purpose of this general license is to ensure that uranium and thorium mill tailings 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. 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 site to protect the public health, safety, and the environment. 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 site to be transferred and licensed;

(2) A detailed description, which can be in the form of a reference, of the final 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 (see Appendix A, Criterion 12 of this Part for more details on inspections and reporting), 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 site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; any such changes must 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 site, even if the action is required by another State or Federal agency.

(d) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, 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 arrangement 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 such actions are to be undertaken, the licensee shall justify to the Commission which requirements from these Parts apply for such 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)(2) and (4)), the Commission will execute its licensing responsibilities 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.

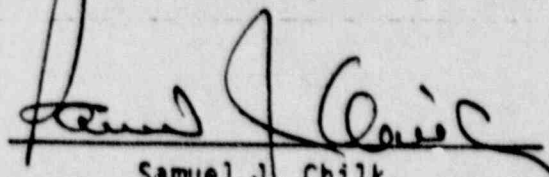
* * * * *

Criterion 12--The final disposition of tailings 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 retaining ultimate custody of the site where tailings, or wastes, are stored to confirm the integrity of the stabilized tailings or waste systems 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 tailings or waste disposal system. In this case, a preliminary inspection report is required to be submitted within 60 days following each inspection.

* * * * *

Dated at Rockville, Maryland this 30th day of JAN, 1990.

For the Nuclear Regulatory Commission.



Samuel J. Chilk,
Secretary of the Commission.