



DOCKETED
USNRC

JAMES J. BLANCHARD, Governor

'90 MAY -7 P4:15

DEPARTMENT OF PUBLIC HEALTH

3423 N. LOGAN
P.O. BOX 30195, LANSING, MICHIGAN 48909

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Raj M Wiener, Director

May 4, 1990

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Gentlemen:

The purpose of this letter is to respond to an Advance Notice of Proposed Rulemaking (ANPR) concerning U.S. Nuclear Regulatory Commission (NRC) regulations for the import and export of radioactive waste, which was received on February 12, 1990, along with a cover dated February 5, 1990 from Frederick Combs, Assistant Director for State, Local and Indian Relations.

Although we support NRC's efforts to address concerns relating to the import and export of radioactive waste, we believe that other regulatory issues need to be resolved before final rulemaking contemplated by this ANPR.

It would seem appropriate for the NRC to establish, first of all, a final policy on exemptions from regulatory control and, subsequently, to issue in final form a revised set of radiation protection standards in the form of new regulations in 10 CFR Part 20. Following this action, the NRC should next complete a revision of the source material regulations in 10 CFR Part 40, along with a reform in the general license provisions throughout the NRC regulatory program. All of the foregoing actions are currently under consideration by the NRC for further NRC action or decision. We believe that all of these actions involve fundamental regulatory concepts that impact upon the implementation of other regulatory program improvements, such as additional rulemaking concerning the import and export of radioactive waste.

Enclosed are detailed staff comments for your consideration relating specifically to the ANPR for the import and export of radioactive waste.

9005230131 900504
PDR PR
110 55FR4181 PDR

5510

Secretary of the Commission
May 4, 1990
page two

Should you have any questions concerning this matter, please contact my staff in the Division of Radiological Health at (517) 335-8200.

Very truly yours,



Lee E. Jager, D.E., Chief
Bureau of Environmental
and Occupational Health

LEJ:DMM

Enclosure

cc: Roland M. Lickus, Chief (with enclosure)
Office of State & Government Affairs
U.S. Nuclear Regulatory Commission, Region III

James F. Cleary, Commissioner (with enclosure)
Michigan Low-Level Radioactive Waste Authority

Michigan Department of Public Health
Bureau of Environmental and Occupational Health
Division of Radiological Health

Staff Comments
on
Advance Notice of Proposed Rulemaking
Concerning NRC Regulations for
Import and Export of Radioactive Waste

On February 12, 1990, staff received the above referenced document along with a cover dated February 5, 1990 from Frederick C. Combs, Assistant Director of State, Local and Indian Relations. A review of this document, along with a review of several other regulatory issues proposed or under consideration by the NRC, indicates that a reprioritization of NRC regulatory activities appears appropriate. We believe several more fundamental regulatory issues need to be resolved before other regulatory proposals can be effectively enacted and implemented. These issues include: a) a final "Policy Statement on Exemptions from Regulatory Control;" b) a revised 10 CFR 20; c) a revised 10 CFR 40; and d) a reform in the general license provisions in order to increase regulatory controls over certain activities involving byproduct and source material. Our comments relating specifically to the Advance Notice of Proposed Rulemaking (ANPR) are as follows:

1. On page 4, we note that the NRC's proposed definition for radioactive waste within the context of the ANPR is less restrictive than that currently applicable to domestic licensees. Given the rationale for what an "exempt quantity" or an "exempt concentration" should mean from a health and safety viewpoint, the risk posed by a person receiving radioactive wastes in amounts less than established exempt amounts should be negligible. The concept of exemptions, of course, is a regulatory issue that has recently been addressed by IAEA in IAEA Safety Series #89, Principles for the Exemption of Radiation Sources and Practices From Regulatory Control, and is currently a proposed policy under consideration by the NRC (see comment #2, below). We believe that a radioactive waste definition within the context of this ANPR must, first of all, be consistent with international and U.S. regulatory policy and regulations, unless health and safety risks to the public would be unnecessarily increased.
2. On page 5, reference is made to below regulatory concern (BRC) as a "forthcoming policy." This statement is somewhat unclear since the BRC policy required by the federal Low-Level Radioactive Waste Policy Amendments Act of 1985 has already been established by the NRC in 10 CFR Part 2, Appendix B, and published in the Federal Register on August 29, 1986. Our understanding is that a broader exemption policy, which was

published in the Federal Register on December 12, 1988, and referred to as "Policy Statement on Exemptions from Regulatory Control" (ERC), is expected to be forthcoming.

3. Concerning Option 1 on page 6, we believe a major reason for the NRC's lack of knowledge as described in this section is a result of the current regulations that apply to source material licensees and to general licensees. We believe that the knowledge base could be significantly improved through revision of the general license concept and through revision of 10 CFR 40, as previously recommended or referenced by NRC staff in a Draft General License Study. Our detailed comments concerning these specific issues were previously forwarded to the NRC in a letter (attached) dated May 5, 1989, from Lee E. Jager, Chief of the Bureau of Environmental and Occupational Health, to Donald MacKenzie of the NRC, State Agreements Program. Further, we believe that NRC progress in this area could limit the extent of or obviate the need for increased regulatory control concerning imported radioactive waste. For example, elimination or revision of some of the current general license provisions in 10 CFR 40.22 could eliminate the potential for problems associated with the use and disposal of certain source materials. In the meantime, the NRC could initiate further study of the problem through increased data collection on the amounts and types of wastes that have been or potentially could be involved in the import and export process and the associated problems impacting upon public health and safety.
4. For Option 2 on page 6, we agree that this option presents no regulatory advantages compared to existing controls applicable to specific licensees. We believe this option is too difficult to enforce and would not be a reliable and effective option.
5. The description of Options 3 and 4 on pages 6-8 appear on the surface to offer improved effectiveness to avoid radiological problems associated with improper import or export of radioactive waste. However, due to the priority issue previously discussed, we believe it may be premature to select a particular option at this time.
6. Concerning page 9, item 2, we suspect there could be health and safety disadvantages as well as advantages to denying import or export of certain radioactive wastes. This determination, from a health and safety perspective, would depend upon the specific information available on a case-by-case basis.

The NRC examples of possible interference with ongoing trade involving sealed sources and gauges may not be appropriate, since such shipments may not be considered shipments of "waste." Many of these sealed sources are typically returned to the supplier before reaching a "waste" status, as ultimately declared by the supplier.

7. In response to the question on page 9, item 4, we are not aware of a current particular problem resulting from the import of radioactive waste. However, as the NRC is aware, we previously reported what we believe to be a significant potential problem concerning inadequate controls for the import of radioactive waste following our receipt of an inquiry from a Canadian firm regarding the transport and disposal of specific source material wastes from Canada to Michigan. This information was originally brought to the attention of the NRC in a letter (attached) dated April 21, 1987 from George W. Bruchmann, Chief, Division of Radiological Health, to Roland Lickus of the NRC, Region III. Although this particular potential problem appears resolved, the resolution was not a comfortable one from a regulatory perspective. It seems important, therefore, to at least consider a means to prevent a similar problem from occurring in the future.
8. Concerning item 5 on page 9, we believe that more data are needed before this question can be adequately answered, especially concerning fuel cycle wastes that might be imported into this country. It may be that significant differences exist between imported wastes and wastes generated domestically.
9. Concerning item 6 on page 9, we believe that imported wastes should be treated in the same way as domestic wastes. From a state regulatory agency's perspective, we have a concern that the host state's ability to enforce waste acceptance requirements on foreign waste shipments may not be adequate. Equivalent regulatory controls, including enforcement capability, over all wastes received at a particular state-regulated disposal facility, regardless of site of origin, will be integral to successful low-level radioactive waste management in this country.
10. For items 7 and 8 on page 9, we believe that the capability of a recipient country to properly manage and dispose of radioactive wastes should be considered by the NRC. We believe the IAEA may be best suited to address this question in more detail.

11. Concerning item 10 on page 10, we believe that the NRC should pursue regulatory authority over NARM, pursuant to the Atomic Energy Act, and that regulatory controls for NARM wastes should be included within the overall framework for regulation of radioactive wastes. Our position on NARM regulation was previously brought to the attention of the NRC through the Conference of Radiation Control Program Directors. We understand from the NRC, in a notice dated September 6, 1988, that the issue is now under study by the Committee on Inter-agency Radiation Research and Policy Coordination.
12. The issues addressed by items 12 and 13 on page 10 cannot be completely resolved unless a final ERC policy is first established in this country consistent with international recommendations. In addition, the definitions for radioactive waste should be established in a manner consistent with international recommendations.

It is apparent to us that the international agreement process is an integral part of the overall implementation process embraced by this ANPR. Both the importing and exporting countries should agree concerning implementation of regulatory requirements before any import and export activity is initiated. Specific controls and licensing criteria should be developed only after the need for improved regulatory controls for import/export of radioactive wastes is re-examined, following the resolution of more fundamental regulatory issues.

Attachments

May 4, 1990