



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

FEB 10 1991

Richard Guimond, Director
Office of Radiation Programs
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Guimond:

As you may be aware, since approximately November 1989 the Nuclear Regulatory Commission (NRC) and Environmental Protection Agency (EPA) staffs have worked to resolve differences on the proposed final EPA groundwater protection standard for remedial actions at inactive uranium processing sites. By last fall our staffs believed that they had resolved all of the issues. It is a credit to both of our staffs that they were able to work together so constructively. After further review, however, I cannot support the proposed agreement reached by our staffs concerning EPA's concurrence of Alternate Concentration Limits (ACLs).

EPA's direct involvement in site-specific implementation of the Title I remedial action program is unnecessary given the NRC's mission of protecting the public health and safety and the environment, as well as logically inconsistent with the flexibilities EPA has incorporated into other provisions of 40 CFR 192, where NRC independently confirms the safety and environmental aspects of DOE's compliance with alternative standards (e.g., Supplemental Standards of Subpart C).

Specifically, EPA's requirement for site-specific concurrence with Alternate Concentration Limits (ACLs), (1) is improper given the Office of the General Counsel's (OGC) position that EPA has no legal right to insist on a concurrence role and that it deviates from the framework established by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA); (2) clouds ultimate responsibility for determining that the ACLs are protective of human health and the environment and are as low as reasonably achievable; (3) wastes limited Federal resources by requiring redundant reviews of the same information by both agencies, not to mention the effort spent by DOE in proposing the ACLs; (4) could unnecessarily increase the level of NRC resources required for the Title I program for discussion and resolution of issues that may arise in either EPA's review of the ACLs proposed by DOE or in NRC's review of the ACLs approved by EPA; (5) could unnecessarily complicate NRC licensing actions at disposal sites following completion of remedial action if corrective actions are needed to restore performance of groundwater protection features or cleanup contaminated groundwater; (6) could lead to establishment of inconsistent ACLs among UMTRCA Title I sites and between Title I and II sites.

As a result of the concerns over the ACL agreement reached between our staffs, the NRC staff has been requested to reevaluate the other issues that had been resolved during the EPA and NRC negotiations on the proposed final EPA groundwater protection standards. Although this review is not completed, the

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staff provides the following comment to EPA on the March 19, 1990, draft standard.

On page 18, EPA should revise the statement that it is not appropriate "to apply detailed cost/benefit balancing judgements to the choice of level to which the groundwater must be cleaned." The statement should say that, while detailed cost/benefit optimization is not appropriate, economic costs (i.e. cost/benefit rationalization) need to be considered in the choice of levels to which groundwater must be cleaned up. Economic costs consideration is essential in making the ALARA determination for ACLs required by EPA in the final standard at 40 CFR 192.02(A)(3)(iii)(B)(1), as well as in 40 CFR 192.32(a)(2)(iv) and Criterion 5B(6) of 10 CFR Part 40, Appendix A, for uranium mill tailings under Title II of UMTRCA. In addition, Section 84(a)(1) of the Atomic Energy Act requires NRC to provide due consideration of economic costs in carrying out its program to ensure protection of the public health and safety and the environment from the hazards associated with 11e.(2) byproduct material.

Should the NRC staff ever raise additional questions they will be provided under separate cover.

Sincerely,

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

cc: J. Gunter, EPA
A. Richardson, EPA
K. Feldman, EPA
T. Hiller, OMB

Distribution: (Ticket-9100028)	EDO Witts 9100004	SECY(9100028)	Central File
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LLWD t/f EDO r/f	MBridges	DMorris	

PDR YES X ACNW YES X
SUBJECT ABSTRACT: LETTER TO EPA ON ALTERNATE CONCENTRATION LIMITS
* See Previous Concurrence

OFC :LLUR*	:LLUR*	:LLUR*	:LLWD*	:LLWD**	:NMSS*	:NMSS
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DATE:01/17/91	:01/17/91	:01/17/91	:01/22/91	:01/25/91	:01/24/91	: 2/1/91

informal surrogates. Such an approach would be inconsistent with EPA's standards being implemented by NRC at the Title II uranium mill tailings sites, which require consideration of a comprehensive set of site-specific factors in approving ACLs.

As a result of the concerns over the ACL agreement reached between our staffs, the NRC staff has been requested to reevaluate the other issues that had been resolved during the EPA and NRC negotiations on the proposed final EPA groundwater protection standards. Although this review is not completed, the staff provides the following comment to EPA on the March 19, 1990 draft standard:

On page 18, EPA should revise the statement that it is not appropriate "to apply detailed cost/benefit balancing judgements to the choice of level to which the groundwater must be cleaned." The statement should say that, while detailed cost/benefit optimization is not appropriate, economic costs (i.e. cost/benefit rationalization) need to be considered in the choice of levels to which groundwater must be cleaned up. Economic costs consideration is essential in making the ALARA determination for ACLs required by EPA in the final standard at 40 CFR 192.02(A)(3)(iii)(B)(1), as well as in 40 CFR 192.32 (a)(2)(iv) and Criterion 5B(6) of 10 CFR Part 40, Appendix A, for uranium mill tailings under Title II of UMTRCA. In addition, Section 84(a)(1) of the Atomic Energy Act requires NRC to provide due consideration of economic costs in carrying out its program to ensure protection of the public health and safety and the environment from the hazards associated with 11e.(2) byproduct material.

Should the NRC staff review raise additional questions they will be provided under separate cover.

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MFliegel DGillen WBeach,RIV RFonner, OGC RHall, RIV(URFO)
PDR YES X ACNW YES X

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Criterion 5B(6) of 10 CFR Part 40, Appendix A, for uranium mill tailings under Title II of UMTRCA. In addition, Section 84(a)(1) of the Atomic Energy Act requires NRC to provide due consideration of economic costs in carrying out its program to ensure protection of the public health and safety and the environment from the hazards associated with 11e.(2) byproduct material.

The Commission's review of the changes to the Statement of Consideration and the standard (as shown in SECY-90-268) has raised additional questions and the Commission has directed NRC staff in the SRM (Enclosure 2) to address them before NRC takes a final position with OMB on this EPA standard.

Sincerely,

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

- 1. SECY-90-268
- 2. January 8, 1991 Staff Requirement Memorandum

cc: J. Gunter, EPA
 A. Richardson, EPA
 K. Feldman, EPA
 T. Hiller, OMB

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SUBJECT ABSTRACT: LETTER TO EPA ON ALTERNATE CONCENTRATION LIMITS *11/23/91*
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Criterion 5B(6) of 10 CFR Part 40, Appendix A, for uranium mill tailings under Title II of UMTRCA. In addition, Section 84(a)(1) of the Atomic Energy Act requires NRC to provide due consideration of economic costs in carrying out its program to ensure protection of the public health and safety and the environment from the hazards associated with 11e.(2) byproduct material.

As stated previously, the NRC and EPA staffs resolved all but one issue through negotiations. Many of these resolutions involved mutual understandings and clarifications in the Statement of Consideration rather than revision to the EPA standard. The Commission's review of the changes to the Statement of Consideration and the standard (as shown in SECY-90-268) has raised additional concerns and the Commission has directed NRC staff in the SRM (Enclosure 2) to address them before NRC takes a final position with OMB on this EPA standard.

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 PDR YES X ACNW YES X
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