

U.S. Environmental Protection Agency
Central Docket Section LE-131
Attention: Air Docket No. A-91-67
Washington, DC 20460

Gentlemen:

The attached comments are forwarded in response to the Notice of Proposed Rulemaking that appeared in the Federal Register on February 7, 1994 (59 FR 5674). This Federal Register notice (FRN) concerned the U.S. Environmental Protection Agency's (EPA's) proposal to rescind 40 CFR Part 61, Subpart T ("National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings") for disposal sites licensed by the U.S. Nuclear Regulatory Commission or NRC Agreement States.

NRC supports the rescission of Subpart T. The regulations governing the disposal of uranium mill tailings to be promulgated by NRC in 10 CFR Part 40, Appendix A, are consistent with the revised 40 CFR Part 192, Subpart D and with the October 24, 1991, Memorandum of Understanding (MOU) between EPA, NRC, and the affected Agreement States concerning Clean Air Act standards for radon releases from uranium mill tailings. These regulations, as amended, will protect the public health with an ample margin of safety, and thereby support EPA's rescission of Subpart T. EPA is also acting in accordance with its commitments made in the March 1993 settlement agreement, which continues the approach set forth in the MOU.

NRC looks forward to continued cooperation between our staffs on the actions related to rescission of Subpart T and minimization of regulatory burden. In NRC's view, dual regulation in this area would confer no benefit on public health and safety. If you have any questions, please have your staff contact Dr. John H. Austin of my staff at (301) 504-2560.

Sincerely,

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

Attachment: As stated

cc: Margo Oge, EPA
Gail Bonnano, EPA

Distribution: Central File# MSS r/f LLDR r/f PSobel
MWeber JAustin DFutoma

PDR YES NO Category: Proprietary or CF Only

ACNW YES NO

SUBJECT: RESCISSION OF EPA SUBPART T OFFICIAL RECORD COPY

OFC:	LLDR	NMSS:D
NAME:	PSobel	RBernero
DATE:	4/29/94	5/3/94

MHS-3-2-4

X-CAR-17
X-M-12

BL
4/29
#2
Delete:
ACNW

080089

9406090061 940503
PDR ORG EUSEPA
PDR

RETURN TO REGULATORY CENTRAL FILES

RESPONSE TO EPA REQUESTS FOR COMMENTS ON THE
PROPOSED RESCISSION OF 40 CFR PART 61, SUBPART T

1. Request: Has the Environmental Protection Agency (EPA) effectively promulgated appropriate revisions to 40 CFR Part 192, Subpart D?

Comment: The U.S. Nuclear Regulatory Commission believes EPA has effectively promulgated appropriate revisions to 40 CFR Part 192, Subpart D, with respect to timely emplacement of the final radon barrier and radon monitoring requirements.

2. Request: Do the NRC regulations at 10 CFR Part 40, Appendix A either already adequately and appropriately implement the revisions to EPA's regulations, or may they be reasonably expected to do so prior to rescission of Subpart T?

Comment: The NRC regulations at 10 CFR Part 40, Appendix A, which are in the final stages of revision before being promulgated, will adequately and appropriately implement the revisions to EPA's regulations in Subpart D. In addition to the rulemaking in 10 CFR Part 40, Appendix A, the total NRC program includes facility reclamation plan approval, a continuing facility inspection effort, and enforcement. Therefore, the NRC program is more comprehensive than just the NRC rulemaking. Summaries of the reclamation plan approval process and inspection and enforcement procedures are contained in an earlier letter to EPA (December 12, 1991, letter from Robert M. Bernero, NRC, to Margo Oge, EPA).

3. Request: Do the revisions of NRC and affected Agreement State licenses reflect the new requirements of Subpart D?

Comment: The revisions of NRC and affected Agreement State licenses reflect the new requirements of Subpart D. NRC and the Agreement States have completed their review and approval of all the license amendments for closure of licensed non-operational impoundments, except the Atlas site. NRC is currently reassessing the reclamation plan for the Atlas site.

4. Request: Are any judicial or administrative challenges to EPA or NRC regulations expected to present a significant risk of interference with full compliance with the MOU and the settlement agreement?

Comment: NRC is not aware of any judicial or administrative challenge, to EPA or NRC regulations, that is expected to present a significant risk of interference with full compliance with the MOU and the settlement agreement.

5. Request: Do the provisions in new section 61.226 added to Subpart T effectively implement the regulatory approach of the MOU and settlement agreement, especially the terms providing specific time periods for a reconsideration rulemaking?

Comment: In proposed 40 CFR 61.226, EPA sets forth the procedures for EPA to act to reinstate Subpart T. Although the Commission continues to question the appropriateness of site-specific reinstatement, we recognize that EPA has committed to this in the March 1993 settlement agreement.

NRC is opposed to the reinstatement of Subpart T on a site-specific basis. Any site-specific departures from the schedules and provisions of the MOU and implementing licensing actions can be adequately addressed through the NRC existing inspection and enforcement programs. Site-specific reinstatement seems to us to be a form of dual regulation which Congress sought to avoid when it enacted section 112(d)(9) of the Clean Air Act.

Under EPA's proposed procedures, a person may petition EPA for reinstatement of Subpart T. The petitioner must provide a written request to NRC or an affected Agreement State for enforcement or other relief at least 60 days before filing its petition with EPA. The petition must allege that NRC or the affected Agreement State failed to respond to take action to implement and enforce the standard. Although the 60-day notification required of potential petitioners may not be sufficient to resolve questions raised by potentially adversely affected parties, that notification, taken together with the publicly proposed decision on a petition to reconsider, and the rulemaking process that would follow in the case of a decision to grant reconsideration, should provide adequate opportunities for resolution of situations that could lead to reinstatement of Subpart T. NRC appreciates that EPA clarified that the 300-day commitment to grant or deny a petition to reconsider does not extend beyond that decision to the rulemaking process itself.

Section 40 CFR 61.226(a)(i) states that the tailings closure plan is contained in the operating license. Since these closure plans are large documents, they are incorporated by reference in the license. However, the closure plans are legally part of the license. Also, the term "operating license" should be changed to "license," because these impoundments are non-operational.