

SIERRA
CLUB



DOCKET NUMBER 40-24
PETITION RULE PRM

DOCKETED
(47 FR 53889)

330 Pennsylvania Avenue, S.E.
Washington, D.C. 20003 (202) 547-1141
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January 28, 1983

DOCKETING & SERVICE
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DRAFT COMMENTS ON THE UNION CARBIDE CORPORATION
PETITION FOR RULEMAKING TO AMEND CRITERIA 1, 5, 6, AND 10
OF APPENDIX A TO C.F.R. PART 40
REGULATIONS RELATING TO URANIUM MILLS AND MILL TAILINGS

Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Service Branch
RE: Docket No. PRM-40-24

Dear Mr. Chilk,

Please find enclosed some preliminary comments of the Sierra Club in regard to the recently submitted petition of the Union Carbide Corporation for a new Commission rulemaking to amend criteria 1, 5, 6, and 10 of Appendix A to CFR Part 40, the Commission's regulations relating to the operation of uranium mills and the disposal of uranium mill tailings. In view of the recent enactment of legislation amending the Uranium Mill Tailings Control Act of 1978, legislation which may require Commission review and potential revision of Commission regulations at some future date to conform with mandated standards of the Environmental Protection Agency, we believe that it would be both premature and inappropriate, at this time, to reopen the Commission's 1980 regulations in response to the Union Carbide Petition.

At the same time, we request that the comment period for the Union Carbide Petition be extended in order to allow a more detailed assessment of the petitioners' arguments, in the context of recent administrative, legal, and legislative developments bearing on the implementation of the Mill Tailings Act itself.

Petitioner claims that the specific amendments proposed to NRC's mill license criteria are supported by new information unavailable to the Commission at the time of the original rulemaking, will adequately protect the public health and safety from the radiation hazards associated with mill tailings, and will reduce petitioner's compliance costs at existing Union Carbide milling operations in Colorado and Wyoming.

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While there is no reason to doubt the third claim, the Sierra Club believes that the first claim should be treated with extreme skepticism, and that the second should be dismissed as entirely without merit.

The petitioner cites a recent report by the House Energy and Water Subcommittee, (H. Rpt. 97-850, Sept. 21, 1982) to bolster the argument that new information tends to undermine the basis on which the Commission's 1980 mill tailings rules were adopted.

However, it is the view of the Sierra Club that the recent enactment of a series of amendments to the Uranium Mill Tailings Radiation Control Act (P.L. 97-415) expresses the clear intent of Congress to continue the Commission's primary responsibility to promulgate regulations to protect the public health and safety under Section 84 of the Atomic Energy Act. This recent legislative enactment (approved January 4, 1983) clearly overrides the previously enacted suspension of the Commission's mill tailings regulations mentioned by the petitioner, while reaffirming the statutory basis on which the Commission's 1980 regulations were founded.

Furthermore, because P.L. 97-415, in setting a new statutory schedule for the Environmental Protection Agency's long-delayed standards for active mills, holds open the possibility for the Commission, at some future date, to amend its regulations to conform to the EPA standards, we believe it would be unwise and premature for the Commission to attempt such a revision now on the basis of the Union Carbide Petition.

The petitioner also argues that technical information made available in hearings before the House Armed Services Committee's Subcommittee on Procurement and Nuclear Systems (Uranium Ore Residues, Potential Hazards and Disposition, June 24 and 25, 1981), buttresses its argument that the Commission's regulations should be amended. Petitioner fails to mention two critical points in regard to these hearings: 1) the Subcommittee on Procurement and Nuclear Systems does not have legislative jurisdiction over UMTRCA, or the Commission, and 2) the House, on December 2, 1982, explicitly rejected the rather drastic views of this Subcommittee in regard to any necessary amendments to UMTRCA, by defeating the amendment offered by Chairman Stratton to the 1982-83 NRC Authorization (H.R. 2330), 107-281. In doing so, the House clearly endorsed the careful revisions of UMTRCA contained in the conference report (Rpt. No. 97-884) produced by the appropriate authorizing Committees, the House Committees on Interior and Insular Affairs and Energy and Commerce, and the Senate Committee on Environment and Public Works.

Petitioner further claims that its proposed amendments to Criteria 1, 5, 6, and 10 of Appendix A will "protect public health, safety and the environment from radiation hazards associated with uranium milling byproduct material..." (UCC Petition at 4).

The Sierra Club takes note of the fact that the petitioner does not claim that its amendments would fulfill the statutory mandate of UMTRCA, recently reaffirmed in P.L. 97-415, to the Commission to insure that the management of any byproduct

material is carried out in such a way as to "protect the public health and safety and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of such material," (42 USC 2014), nor the equally important mandate that, after the termination of any license for the processing or possession of byproduct material, "the need for long term maintenance and monitoring...be minimized and, to the maximum extent practicable, eliminated." (42 USC 2014)

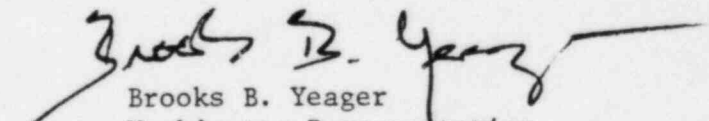
In the view of the Sierra Club, even petitioner's narrow claim that the proposed amendments would "protect public health, safety, and the environment," is without merit and should be dismissed. The amendments proposed by the petitioner would: 1) drastically reduce the amount of time over which successful stabilization is to be achieved (from "thousands of years" to 100-200 years), 2) eliminate the Commission's radon flux standard, 3) seriously weaken groundwater clean-up requirements for existing mills, and 4) eliminate the Commission's minimum requirement for earth cover.

In our view, the defects of such an amended mill tailings regime clearly outweigh any temporary pecuniary advantage which would accrue to individual uranium operators as a result of the weakened requirements.

The limited stabilization time proposed by the petitioner bears no relation to the length of time, estimated by the Commission, as "hundreds of thousands of years," over which unstabilized mill tailings will remain hazardous. The elimination of the Commission's radon flux standard ignores an entire category of potential health hazards related to the presence of radon and radon daughters downwind of unstabilized tailings piles. The new groundwater clean-up standard proposed by the petitioner seems almost designed to be ineffective, and flies in the face of mounting evidence of groundwater hazards associated with existing mills. Finally, the elimination of the Commission's well-considered requirement for the installation of three meters of earth cover would serve to remove any final possibility that long-term stabilization of mill tailings at active uranium mills would be accomplished with the safety and finality demanded by UMTRCA.

The Sierra Club urges the Commission not to grant a new rulemaking on the basis of the Union Carbide Petition. We also request further time, if possible, in which to elaborate the preliminary comments contained in this letter.

Thank you for your kind attention,


Brooks B. Yeager
Washington Representative

cc: Commissioners of the Nuclear Regulatory Commission



THE STATE OF WYOMING

In reply refer to:

Attorney General

CHEYENNE, WYOMING 82002
PHONE 307 777-7841

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A.G. McCLINTOCK
ATTORNEY GENERAL

DOCKETING & SERVICE
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January 26, 1983

Mr. Samuel Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKET NUMBER
PETITION RULE PRM-40-24
(47 FR 53889)

ATTN: Docketing and Services Branch

RE: Union Carbide Corp. Docket No. PRM 40-24

Dear Mr. Chilk,

I am writing to request an extension of the comment period on the above referenced rule. In support of this request, I offer the following reasons:

1. The State of Wyoming will be directly affected by the proposed changes because of the numerous uranium mills in the state, and by virtue of its non-agreement status.
2. Because of the Christmas Holidays this petition did not come to the attention of the State of Wyoming until recently.
3. The State of Wyoming has not had an opportunity to see or evaluate the petitions involved and cannot meaningfully participate in the rule making process.
4. No harm will come to petitioner Union Carbide by granting a reasonable extension.

As you may be aware, the state has met frequently with NRC Officials during the past months in an effort to coordinate the regulation of Uranium milling in Wyoming. During these discussions, the Union Carbide Petition was not mentioned by the NRC personnel even though several issues raised by the

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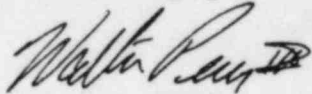
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Mr. Samuel Chilk
January 26, 1983
Page 2

Petition were among the topics discussed. At any rate, the State of Wyoming is extremely concerned about the potential environmental impacts that could occur because of the proposed changes in the regulations and accordingly, requests a meaningful opportunity to comment.

Thank you for your consideration of this request, and I appreciate your anticipated prompt reply.

Sincerely yours,



Walter Perry, III
Senior Assistant
Attorney General

WP:sc

Environmental Policy Institute

317 Pennsylvania Ave. S.E. Washington, D.C. 20003
202/544-2600

January 30, 1983

'83 JAN 31 P3:24

Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKETING & SERVICE
BRANCH

Attention: Chief, Docketing and Service Branch

Dear Mr. Chilk:

DOCKET NUMBER

PETITION RULE

PRM-40-24

(47 FR 53889)

Enclosed please find a petition for a request of an extension of the public comment period in the matter of Union Carbide Corporation's petition for rulemaking concerning uranium mill tailings regulations (10 CFR Part 40 Appendix A) as noticed by the Commission (47 FR 53889, November 30, 1982).

Very truly yours,

David M. Berick
Environmental Policy Institute

*DS11
add: John Philips 4000 NWBB
W. Ott 1130 SS*

Acknowledged by card *2/8/83 emp*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
PETITION FOR RULEMAKING BY)
UNION CARBIDE CORPORATION TO)
10 CFR PART 40 APPENDIX A)

Docket No. PRM-40-24

83 JAN 31 P3:24

DOCUMENT SERVICE
BRANCH

REQUEST FOR EXTENSION
OF PUBLIC COMMENT PERIOD

DOCKET NUMBER
PETITION RULE PRM-40-24
(47 FR 53889)

The Environmental Policy Institute, a non-profit public interest environmental organization located in the District of Columbia hereby requests a 45-day extension of the public comment period in the matter of a petition for rulemaking by the Union Carbide Corporation and noticed in the Federal Register by the Commission(47 FR 53889, November 30, 1982). The Environmental Policy Institute participated in the Commission's rulemaking resulting in the current rule, 10 CFR Part 40, Appendix A, which the petitioner seeks to modify.

REASONS FOR THE REQUEST

Subsequent to the filing of the petition by Union Carbide several developments have occurred potentially effecting the Commission's authority and responsibility for regulating uranium mill tailings. On January 4, 1983, a number of amendments to the Atomic Energy Act and to the Uranium Mill Tailings Radiation Control Act of 1978(P.L. 95-604)were enacted. These amendments place new requirements upon the Commission for reviewing 10 CFR Part 40. As a result of this situation, which the Commission has been informed of by staff at its morning business meeting on January 28, 1983, the Commission intends to conduct a thorough review of its uranium mill tailings regulations. As a result of these amendments and other the matters, the Executive Director of Operations has also convened a taskforce, as of November 23, 1982, to review the Commission's uranium mill tailings regulations.

Because the issues raised by the Union Carbide petition are directly related to the review of uranium mill tailings regulations, including statutory requirements enacted subsequent to both the filing of the petition and the Commission's notice of the petition, the Environmental Policy Institute requests an extension of the comment period so as to be able to address questions raised by the petition which may coincide with the other regulatory reviews as well as to the merits of the petition in light of these subsequent events.

Respectfully submitted,

ENVIRONMENTAL POLICY INSTITUTE

By David M. Berick

David M. Berick

Environmental Policy Institute
317 Pennsylvania Ave. SE
Washington, D.C. 20003
202-544-2600

Dated: January 30, 1983