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OCT 11 1990

MEMORANDUM FOR: David L. Meyer, Chief
Regulatory Publications Branch
Division of Freedom of Information
and Publication Services
Office of Administration

FROM: Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

SUBJECT: IMPLEMENTATION OF COMMISSION ACTION: FINAL RULEMAKING
FOR AMENDMENTS TO 10 CFR 40

By memorandum dated October 3, 1990, the Secretary of the Commission indicated that the Commission has agreed to proceed with the Final Rulemaking on the Custody and Long-Term Care of Uranium and Thorium Mill Tailings Disposal Sites. The material in SECY 90-282 has been amended in accordance with Commission instructions.

Please implement the Commission's action by arranging for publication of the enclosed Notice in the Federal Register (Enclosure 1). Also enclosed are the Environmental Assessment and Finding of No Significant Impact, the Regulatory Analysis, Congressional Letters (3), the Public Announcement, and the Staff Requirements memo. As discussed with members of your staff, we would also like 100 copies of the Federal Register Notice for distribution.

Original Signed By:
C. J. Heltemes, Jr. / *for*
Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosures:

1. Federal Register Notice of Final Rulemaking (3 copies)
2. Environmental Assessment and Finding of No Significant Impact (3 copies)
3. Regulatory Analysis (3 copies)
4. Proposed Rule Comments and Analysis (3 copies)
5. Congressional Letters (3 letters)
6. Public Announcement
7. October 3, 1990 Staff Requirements Memo

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Jeffrey H. Desautels
Senior Attorney

DOCKET NUMBER **PR 40**
PROPOSED RULE **(55 FR 3970)**

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April 20, 1990

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FEDERAL EXPRESS
DEPARTMENT OF SECRETARY
& SERVICE
BRANCH

Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

Re: **Proposed Rule for Custody of Long-Term Care of Uranium Mill Tailings Sites, 10 CFR Part 40, 55 Fed. Reg. 3970 (February 6, 1990)**

Dear Sir or Madam:

Arco Coal Company ("Arco") appreciates the opportunity to comment on the referenced proposed rule. Arco owns the Bluewater Uranium Mill near Grants, New Mexico which is an "active" site subject to the requirements of Title II of the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"). The Bluewater Mill is being demolished at this time, and in addition Arco has submitted a plan to the NRC for approval of final reclamation and closure under appropriate NRC rules and guidance.

In general, Arco wholeheartedly supports these proposed rules. We believe the Commission has done a particularly good job of setting forth the transition to final DOE custody and control of Title II sites. We have a few specific comments and questions regarding certain aspects of the proposed rules.

Our first comment relates to the statement, repeated several places within the preamble to the proposal, that the DOE is responsible for preparing and submitting to the Commission a "Long-Term Surveillance Plan", or LTSP. Because this requirement is placed upon the DOE, rather than the specific licensee, the NRC has determined that the proposed rule will not significantly impact the private sector. Our concern in this regard is that if DOE delays preparation and submittal of the LTSP, the licensee may be placed in a position of having to delay final closure and turnover of its site to the federal government. This would cause further costs to be imposed, creating doubt in our minds as to whether this rule truly will have no significant impact on the private sector.

The preamble (at p. 3974) and the proposed rule itself are not specific enough in this regard. The preamble states that in the event the LTSP has not been submitted by DOE by the time the NRC is ready to terminate the specific license, the NRC has the choice of either delaying termination of the specific license, or of ordering the DOE to assume control over the site and conduct surveillance. Section 40.28(b) contains the same optional language. Licensees need to be assured that turnover will not be

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Secretary, U.S. Nuclear Regulatory Commission

April 20, 1990

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delayed. Therefore, the NRC should change the second sentence of Section 40.28(b) to read that "...the Commission shall 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." Otherwise, licensees could be placed in the untenable position of having final closure delayed, perhaps indefinitely, while DOE decides whether and when to submit an LTSP. That would create significant financial impacts on the private sector that can't be ignored by NRC in this rulemaking.

Our second point relates to the "minimum" \$250,000 payment for long-term surveillance. Again, there appears to be some confusion regarding how the specific amount of that payment is to be determined. On p. 3974 of the preamble, it is noted that "(T)he minimum charge may be adjusted based on site specific requirements in excess of those specified in Criterion 12 of Appendix A." We assume that such an adjustment would be used only in cases where a closure plan requires active maintenance rather than the passive maintenance scheme assumed in Criterion 12. However, that is not made explicit in the proposal. For example, on p. 3975 the following statement appears:

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.

That section continues:

"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)."

We assume that so long as standards in effect at the time the NRC approves the closure plan are followed by the licensee, and the closure plan itself provides for passive maintenance measures only, the charge will be \$250,000. Additional requirements proposed after that point by the DOE will not increase the payment. The DOE should examine each site for a LTSP on a site-specific basis, consistent with NRC criteria.

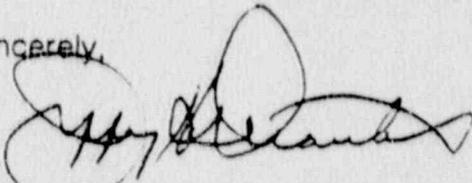
Secretary, U.S. Nuclear Regulatory Commission

April 20, 1990

Page 3

Again, Arco Coal Company appreciates the opportunity to comment on the proposed rules. If you have any questions, please don't hesitate to call me at (303) 293-4444.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey H. Desautels". The signature is fluid and cursive, with a large loop at the end.

Jeffrey H. Desautels
Sr. Attorney

c: R. Krablin
R. S. Ziegler

DOCKET NUMBER
PROPOSED RULE PR 40
(55 FR 3970)

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Roy Romer
Governor

Thomas M. Vernon, M.D.
Executive Director

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 20, 1990

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

RE: Proposed rule: Custody and Long-Term Care of Uranium Mill Sites

The Department has the following comments in response to your February 6, 1990 proposed rule concerning custody and long-term care of uranium mill sites (FR 55(25): 3870 ff):

1. The rule includes no direct, explicit provision for state concurrence in a Long-Term Surveillance Plan (LTSP) prepared by the federal government. This comment was provided in our letter of October 21, 1988 (copy enclosed) and was not addressed Section VIII, comments on the ANPRM, of your February 6, 1990 FR notice.
2. As before, please be advised that all of Colorado's Title I sites are either specifically licensed (6) or regulated under the general criteria of Part XI of Colorado's *Rules and Regulations Pertaining to Radiation Control*. Over twenty years of experience with inactive site maintenance and interim stabilization shows this to be essential.
3. A flaw in the proposed rule which requires correction is the apparent premise that a Long-Term Surveillance Plan (LTSP) will be prepared only after closure and license termination. Colorado requires and will continue to require the development and establishment of an adequate LTSP and Fund prior to termination of a commercial uranium mill site license. The language of the proposed rule should be modified to clarify this option.

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PROPOSED RULE NUMBER **PR 40**
(55 FR 3970)

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USNRC

Department of Energy
Albuquerque Operations Office
P.O. Box 5400
Albuquerque, New Mexico 87115

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OFFICE OF SECRETARY
DUCKETING & SERVICE
BRANCH

APR 20 1990

Samual J. Chilk
Office of Nuclear Regulatory Research
U.S. Nuclear Regulatory Commission
Mail Stop NLS-260
Washington, DC 20555

Dear Mr. Chilk:

Enclosed for your consideration are the U.S. Department of Energy's Uranium Mill Tailings Remedial Action Project Office's comments to the proposed rule for the Custody and Long-Term Care of Uranium Mill Tailings Site published in the Federal Register, Volume 55, Number 25, February 6, 1990.

Should you have any questions, please contact Milt Scoutaris of my staff at FTS 845-5630.

Sincerely,

Mark L. Matthews
Project Manager
Uranium Mill Tailings Remedial Action
Project Office

Enclosure

cc w/enclosure
S. Mann, EM-451, HQ
W. Maez, OCC, AL
C. Cormier, UMTRA, AL
M. Scoutaris, UMTRA, AL
M. Tucker, GJPO, ID

cc w/o enclosure:
S. Hill, JEG
B. Glover, JEG

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4. No active maintenance is the goal of 10 CFR 40, Appendix A. Colorado's comments on NRC's uranium mill rules have strongly supported reclamation which keep long-term monitoring and maintenance to the minimum. However, at some sites in Colorado where milling and milling impacts have occurred for many years, the Radiation Control Division expects the amount of a site-specific long-term care fund to be substantially greater than \$250,000 in 1978 dollars. The proposed rule fails to address the dedication of such funds to care of a specific site, if and when transfer of the site to the federal government should occur. The rule should provide mechanisms toward assuring that adequate funds will continue to be available.
5. No specific language in the Atomic Energy Act of 1954, as amended, or in 10 CFR, requires the particular general license approach to custody and long-term care presently chosen. NRC's approach takes cognizance of the reserved obligation in 10 CFR 150.15a(b)(4) and (5) concerning minimum standards for long-term monitoring, surveillance, and maintenance of land used as a disposal site for byproduct materials. As specifically authorized by the Act, however, LTSPs for Colorado Title II sites may be required to meet more stringent state requirements.

We look forward to seeing discussion of the issues in the rationale for any final rule promulgated by the Commission.

Sincerely,



Robert M. Quillin, Director
Radiation Control Division

RMQ/KLKW/msm

Enclosure

U.S. DEPARTMENT OF ENERGY
URANIUM MILL TAILINGS REMEDIAL ACTION PROJECT OFFICE

COMMENTS ON
10 CFR PART 40

APRIL 17, 1990

A. GENERAL COMMENTS ON THE SUPPLEMENTARY INFORMATION

The language in the Supplementary Information is often not consistent with the intent of the amendments. The most commonly occurring such inconsistency is the use of the word "site" when "disposal site" or in a few cases "processing site" should be used.

It is noted that the amended language in the Proposed Rule clarifies that surveillance and maintenance for the Title I sites will be required only at disposal sites; however, there are still several areas where Commission policy is not clearly defined. The regulations clearly state that the general license will be issued for the "long-term care of the disposal site" and that issuance of the general license is contingent upon (1) receipt of a surveillance and maintenance plan for the disposal site and (2) the Commission's concurrence that "the remedial action is complete." The Commission states in this Proposed Rule that full concurrence for any given "site" will not be forthcoming until the aquifer restoration phase of the UMTRA Project has been completed for that site. It is not clear from the Proposed Rule, even with the proposed two phases for licensing, if "full licensing" is conditional upon groundwater restoration at any processing site, or at just the sites where the materials were stabilized in place. It is assumed that "site" in this context applies to the processing site whether or not it is also a disposal site.

Comments on the Supplementary information text are grouped by section, as provided in the Proposed Rule notice. Paragraphs are numbered by section. Text from the proposed rule is provided in sufficient detail to clarify the comment. Pertinent phrases for discussion are underlined.

Section 1. Background

1. The word "site" appears throughout the text. Although "disposal site" generally is the implied definition, it is not always so; therefore, the term should be clearly stated as such, or as "processing site" when appropriate.
2. Paragraph 2, sentences 1 and 2: "Title I of UMTRCA...remedial action program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by the DOE, these sites be cared for..."

Comment:

- i. Consistent with Section 104(f)(2) of the UMTRCA, which governs the custody of any property transferred to the DOE or other designated Federal agency, the license granted by the NRC will be for the long-term care of the disposal sites. The following revision is suggested:

"Title I requires..., the permanent disposal sites be cared for..."

Section II. Proposed Action

1. Second paragraph, last sentence: "...upon receipt of an LTSP that meets the requirements of the general license..."

Comment:

It is noted that in this paragraph and in other sections of the text the word "receipt" is used; however, in the proposed regulation, 40.27, "acceptance" is the wording.

2. Paragraph 4, first sentence: "The general licensees for long-term care are exempted from 10 CFR Parts 19, 20, and 21...."

Comment:

- i. There are no provisions in the regulations which state explicitly that the general licenses are exempt from 10 CFR Parts 19-21, as discussed in the proposed action. The Commission should evaluate the need to include this in the regulations, consistent with the exemption specified for Section 40.7, Employee protection.

2. Paragraph 7, first sentence: "Criterion 12 only deals with Title II licensees....Title I should have comparable reporting requirements..."

Comment:

- i. The regulations should specify that reporting requirements comparable to Appendix A, Criterion 12, are applicable to Title I disposal sites.

3. Paragraph 8, first sentence: "There are some differences in requirements for sites located on Indian lands...."

Comment:

- i. For those sites where the disposal facility is on Indian lands, the tribes will retain ownership of the material and the land. An exception is provided in Section 105(b) of the UMTRCA, which states that in those cases where the residual radioactive material from processing sites on Indian land is relocated to a permanent disposal area not on Indian land, the DOE shall acquire title to the residual radioactive material in addition to the disposal site. This should be stated in the text.

ii. Suggested revisions to the last sentence:

"Four of the Title I processing sites, of which three will be used as disposal sites, are on Indian land

4. Paragraph 10, first sentence: "Both 40.27 and 40.28 allow for potential future uses of the sites...."

Consistent with the UMTRCA, Section 104(h), at the Title I disposal sites, only subsurface mineral rights will be available for future use. However, at the processing sites, once the surface remedial actions are completed, surface rights will be available as long as the use does not impede future groundwater restoration activities. This should not be confused with the Title II disposal sites, where subsurface and surface rights will be available, considered on a case by case basis. This should be clarified in the text.

Section III. Uranium Mill Tailings Remedial Action Amendments Act of 1988

1. Paragraph 3, sentence 4: "When groundwater restoration is completed, the Long-Term Surveillance Plan would be appropriately amended."

Comment:

- i. It is not clear here or in the regulations as to which sites this includes. The following revision is suggested:

"At sites where the remedial action was stabilization in place, when groundwater restoration is completed the Long-Term Surveillance Plan would be appropriately amended."

2. Paragraph 4, first sentence: "The Act itself did not address...requiring mandatory post-closure performance monitoring."

Comment:

- i. "Post-closure" is not the appropriate term for Title I sites where remedial action rather than closure activities are performed; also, 40 CFR 192 requires compliance monitoring rather than performance monitoring (or "screening" and "detection" monitoring). For consistency with the language and the purpose of these two UMTRCA Programs, the following revision is suggested:

...requiring mandatory compliance monitoring...."

Section IV. The Stabilization and Long-Term Care Program (Title I and Title II)

Title I (24 Sites):

1. Paragraph 5, second sentence: "...decontamination, decommissioning, and reclamation...."

Comment:

- i. These are words that have a more appropriate meaning for sites that already have a license, which Title I sites specifically do not have. "Remedial action" should be used here instead, as it is more appropriate for Title I sites.
2. Paragraph 6, first sentence: "NRC concurrence...that reclamation of the site...."

Comment:

- i. Suggest changing "reclamation" to "remedial action," given the differences in the requirements for Title I and II sites.
3. Paragraph 6, sentence 5: "When ground water restoration is completed, the LTSP will be appropriately amended."

Comment:

- i. As noted in the general comments in Section A, it is not clear if the two-phased licensing approach is restricted to the sites stabilized in place (SIP), or to all Title I sites, including the relocated disposal sites.
4. Paragraph 7, sentence 3: "NRC concurrence with completion indicates that the site has been stabilized in accordance with EPA standards...."

Comment:

- i. As this sentence is written, it is not clear if "stabilization" refers to actual completion of Subpart A requirements or to "completion of remedial action," as is stated elsewhere throughout the text and in the regulations.

5. Paragraph 7, last sentence: "There is no termination date for the general license."

Comment:

- i. Since expiration periods are specified in the regulations for other licensed facilities, that there is no termination to the general license for the Title I and II sites should be specified in the regulations.

Title II

1. Paragraph 4, item 5: "...Title I sites have been reclaimed...."

Comment:

- i. "Remediated" rather than "reclaimed" should be used to reference the activities at Title I sites.

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

Title I:

1. Paragraph 5: "If it is determined that groundwater monitoring is required..., then it should be conducted in two phases, screening...and evaluative monitoring."

Comment:

- i. The terms "screening" and "detection" are not consistent with proposed 40 CFR 192. "Compliance monitoring, compliance strategy, and corrective action program" are more accurate terms for Title I disposal sites.
2. Paragraph 6: "Initial surveillances should include the acquisition and interpretation of aerial photography."

Comment:

- i. Aerial photographs of the Title I sites are taken immediately upon completion of the construction and after the permanent surveillance features have been installed. The photographs are used to prepare the final topographic map and as-built drawings and are kept in the permanent site file for future reference, should a problem develop at the site. In the unlikely event that a problem (such as erosion) should occur, the photographs provide baseline information about site conditions. New aerial photographs are taken if it becomes necessary to monitor a problem over a long period of time.

B. COMMENTS ON AMENDMENTS TO 10 CFR 40

This section provides comments which address the proposed changes to the Part 40 regulations as they are listed in the Proposed Rule. The proposed language for each part is provided for reference. However, the text is not reproduced in its entirety, but rather in portions of sufficient length to highlight the significance of the comment. Phrases which are subject to comment are underlined.

1. Part 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,...These regulations also provide for disposal and long-term care of byproduct and residual radioactive material.

Comments:

For the reasons stated below, we suggest that the sections above be amended to read:

"receive title to,...transfer, deliver, or dispose of source and byproduct materials, as defined in this part,...The regulations also provide for the long-term custodial care of byproduct and residual radioactive materials."

- i. There are no procedures or regulations within Part 40 which affect or pertain to the disposal of the residual radioactive material at Title I sites. The disposal procedures for the Title I sites are defined in 40 CFR 192. As stated in the "Introduction to Appendix A," Appendix A of 10 CFR 40 outlines procedures for the disposal of byproduct material at active uranium and thorium sites exclusively. For these reasons, including the term "disposal" in concert with "long-term care of...residual radioactive material" is misleading with regard to the Title I sites. However, under the provisions of 10 CFR 40, which provides regulations for the disposal of the Title II byproduct material, inclusion of "disposal" in this section of the regulations is required. The revisions suggested here are consistent with the language in the proposed revision to Part 40.3, License requirements (55 FR 3978).

2. Part 40.2a, Coverage of inactive tailings sites.

(a) Prior to the completion of remedial action,...for the possession of residual radioactive materials...if the site...Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The Commission...in the execution of 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.

Comments:

For the reason stated below, we suggest that the first sentence above be amended to read:

"Prior...Uranium Mill Tailings Radiation Control Act of 1978, as amended."

- i. The second reference to the UMTRCA, but not the first, includes "as amended."

3. Part 40.4, Definitions.

"Residual radioactive material means:...(2) other waste...at a processing site which relates to such processing.... 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."

Comments:

We suggest amending this definition to read:

(2)...This term is used only with respect to radioactive materials associated with processing operations at sites subject to remedial action...of 1978, as amended."

- i. Since the concept of a disposal site, specifically described, appears first in 40.2a, the use of "sites subject to remediation" could be misleading here.
- ii. "...as amended." should modify the UMTRCA to ensure consistency within the regulations.

4. Part 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.

Comments:

i. Paragraph (e) requires posting of Form NRC-3, "Notice to Employees." Since the UMTRA disposal sites are designed for passive maintenance with no permanent on-site personnel, it is prudent to include 40.27 and 40.28 in this exemption.

5. Part 40.20, Types of licenses.

(a) Licenses for source material, byproduct material, and residual radioactive material are of two types: general and specific...(regulations define types of licenses here).

(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 the (UMTRCA) of 1978.

(c) Section 40.28 contains a general license.. of byproduct material at uranium or thorium mill tailings disposal sites under Title II of the (UMTRCA) of 1978.

Comments:

We suggest amending this section to read:

(a) "Licenses for source and byproduct material are of two types: general and specific. Licenses for residual radioactive materials are general licenses."

i. As the regulation is stated in paragraph (a) of 40.20, there is the implication that Title I and II disposal sites are eligible for either a specific or general license, when in fact this is not the case as stated in paragraphs (b) and (c). The same is true for 40.3, License requirements.

ii. Use of the phrase "uranium mill tailings disposal sites" is beneficial as it eliminates any confusion or ambiguity regarding licensing requirements and long-term care activities.

iii. We note that the term "custody" appears in both paragraphs (b) and (c), not shown here, yet was deleted from 40.1.

6. Part 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... for remediated uranium mill tailings sites under Title I of the (UMTRCA), as amended. The license is available only to the (DOE), 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...after remedial action is 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 (DOE'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...Each LTSP must include-

(1) A legal description....

(2) A detailed description, which can be in the form of a reference, of the final site conditions....If the site has continuing aquifer restoration requirements, then the licensing process will be completed in two phases....When the Commission concurs with the completion of ground water restoration, the license shall assess the need to modify the LTSP....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....

(4) ..criteria for follow-up inspections....

(5)...criteria for...maintenance or emergency measures.

Paragraphs (c) through (e) are not listed here.

Comments:

i. Since the license is issued for the custody and long-term care of the disposal sites, it would be more appropriate to change "remediated uranium mill tailings sites" to "disposal sites." As the language stands, "uranium mill tailings sites" does not accurately describe the purpose and intent of the licensing requirements.

ii. We do not support the change from "receives" to "accepts" for a site LTSP.

- iii. This section should include language that makes it clear that only conditional concurrence will be granted on all remedial action plans until all groundwater restoration issues at processing sites are resolved.
 - iv. We support the addition of the paragraph stating that the license becomes effective only upon completion of two matters: (1) receipt of the LTSP and (2) concurrence with the DOE's determination of completion of the remedial action.
 - v. We support the new two-phased approach to licensing as we recognize that postponement of licensing pending completion of 40 CFR 192 Subpart B issues would prohibit an effective implementation of long-term care at the disposal sites.
 - vi. We support the deletion of the requirement from paragraph (b)(2) that requires the LTSP to provide details on aquifer restoration at the disposal sites.
 - vii. Part 40.27 should specify that routine site inspections will be conducted and a report will be submitted to the NRC that summarizes all surveillance and maintenance actions and certifies that site licensing requirements continue to be met. Or, language should be added that specifies where these criteria can be found. As specified in the Introduction, Criteria 12, Appendix A is applicable here.
 - xi. "(b)(2)...existing groundwater characterization" should be changed to "...existing groundwater characterization, and compliance strategy for groundwater protection in accordance with proposed regulations set forth in 40 CFR 192.
8. Part 40.28, General license for long-term care of uranium or thorium byproduct materials sites.

[text not shown here]

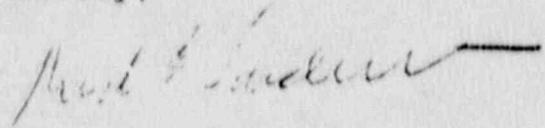
Comment:

- i. For Title II sites on Indian lands, language should be added that states that these sites will be considered on a site-by-site basis.

- o 40.28(d)(3) -- This section permits future use of the site if a license for such use is granted. The licensee must secure financial arrangements to assure that the site will be restored if the byproduct materials are disturbed. The rule should require the preparation of a closure plan in those cases where disturbance is anticipated as part of future use.
- o Appendix A to Part 40 -- This section requires annual inspections of licensed sites. EPA recommends that the inspections be conducted semiannually for the first five years after closure or remediation, with annual inspections thereafter. The first five years is the time period when most problems occur.

If NRC has any questions concerning our comments and recommendations, Dr. W. Alexander Williams (382-5909) of my staff can provide additional assistance to the NRC staff.

Sincerely,



Richard E. Sanderson
Director
Office of Federal Activities



DOCKET NUMBER
PROPOSED RULE **PR 40**
(55 FR 3970)

AC56-2
PDR (4)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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APR 23 1990

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OFFICE OF SECRETARY
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COMPLIANCE MONITORING

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing and Service Branch

Dear Mr. Chilk:

In accordance with Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) proposed rule for the Custody and Long-Term Care of Uranium Mill Tailings Sites (55 CFR 3970; RIN 3150-AC56). This proposal would establish a procedure for the licensing and surveillance of uranium and thorium mill tailings sites after closure by the licensee. Specifically, the proposal would grant a general license to the Department of Energy (DOE) or a state for the ownership, custody, maintenance, and care of mill tailings sites after remedial action and/or closure at the facility. The proposal further specifies what conditions must be met by the owner (DOE or the state) and which of the NRC's current rules are applicable to this type of license.

EPA recommends the following clarifications to the NRC proposal:

- o 40.27(b)(2) -- This section requires that a groundwater characterization be performed prior to licensing. It should also present guidance as to what is an acceptable characterization.
- o 40.28(d)(1) -- This section allows for future use of remediated or closed sites as long as there is no endangerment of human health and the environment. The rule or preamble should specify exactly the types of studies a licensee must submit to prove that the use will never cause endangerment. Further, the rule should require the placement of a notice in the land title or deed which identifies the site as being used for uranium or thorium mill tailings disposal.

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DOCKET NUMBER 99 40
PROPOSED RULE (55 FR 3970)

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PDR (5)

United States Department of the Interior

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USNRC

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

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APR 26 OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Secretary
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

Dear Sir:

The Department has reviewed and provides the following comments on the U.S. Nuclear Regulatory Commission's proposed regulation at 10 CFR Part 40, Custody and Long-Term Care of Uranium Mill Tailings Sites, 55 FR 3970, February 6, 1990.

Currently, the Department finds that the proposed regulation indicates that ground water monitoring may be required as part of the long-term surveillance plan. The Department also suggests that it may be appropriate to monitor wetlands located in relative proximity to uranium mill tailings sites as part of the long-term surveillance plan. Wetlands can be critical to fish and wildlife in the area, and the maintenance of their integrity and beneficial uses should be considered in developing the long-term surveillance plan.

If you have any questions regarding the comments, please call Mary Josie Smith of the Office of Environmental Affairs at 343-8661.

Sincerely,

John E. Schrote
John E. Schrote
Deputy Assistant Secretary
Policy, Management and Budget

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DOCKET NUMBER
PROPOSED RULE

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(55 FR 03970)

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STATE OF ILLINOIS
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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

THOMAS W. ORTCIGER
DIRECTOR

May 4, 1990

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

Attention: Docketing and Service Branch

Re: Proposed Rule, "Custody and Long-Term Care of Uranium Mill Tailings Sites;" 10 CFR Part 40; 55 Federal Register 3970-3980 (February 6, 1990).

The Illinois Department of Nuclear Safety (IDNS) hereby submits its comments on the above-identified proposed rule concerning custody and long-term care of uranium mill tailing sites. Upon receiving the amended agreement, IDNS will be the lead agency in Illinois for regulating mill tailings sites. We understand that the custody and long-term care of the uranium mill tailings sites will be either with the state or the federal government, currently the U.S. Department of Energy, at the option of the state. The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires that the custody and long-term care of uranium mill tailings sites be under a license issued by the Commission. We agree that the general license, as in this proposed rule, would be the most efficient means of meeting the statutory requirement. We suggest one modification, that is to change the description of the proposed rulemaking to more accurately reflect that uranium and thorium mill tailings are both included in the rule. The new description would be, "Custody and Long-Term Care of Uranium and Thorium Mill Tailings Sites."

Thank you for the opportunity to comment on these proposed rules. If you have any questions, please contact me.

Sincerely,

Paul D. Eastvold

Paul D. Eastvold, Manager
Office of Radiation Safety

PDE:SCC:gs

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lp.

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