



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 24, 2020

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SUBJECT: ISSUES REGARDING CLASSIFICATION OF ENVIRONMENTAL SAMPLES AS 11e.(2) BYPRODUCT MATERIAL AND REQUEST FOR CONSIDERATION FOR INCLUSION OF ADDITIONAL REGULATORY LANGUAGE IN POTENTIAL UPCOMING RULEMAKING

Dear Mr. Pugsley:

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed Alexco's letter dated September 13, 2019 (NRC's Agencywide Documents Access and Management System [ADAMS] Accession Number ML19288A212), on classification of environmental samples at uranium recovery facilities. The letter was submitted on behalf of a group of analytical laboratories and uranium recovery companies and contained proposed options for reducing the regulatory burden on these companies for the NRC staff to consider.

The requirements related to laboratory samples and 11e.(2) byproduct material are clear in NRC regulations. Clearly identifying samples that contain 11e.(2) byproduct material and sending them to an appropriately licensed laboratory is required by NRC regulations. Examples of samples that should be identified as containing 11e.(2) byproduct material include routine groundwater samples collected in a contamination plume or collected adjacent to a contamination plume such that there is a high probability that 11e.(2) material is present.

Based on discussions during the April 23, 2020, public meeting (ADAMS Accession Number ML20126G504), the NRC staff understands Alexco's position that environmental samples containing 11e.(2) byproduct material are not risk significant and should not require regulatory oversight under a specific license. The September 13, 2019, letter identifies some potential options that Alexco believes NRC staff could utilize to address this issue in the long term.

Exemption/Exclusion

Under this option, Alexco proposes for the NRC to promulgate an exemption/exclusion similar to that by the Environmental Protection Agency under Title 40 of the *Code of Federal Regulations* (40 CFR) 261.4(d), where samples are excluded from specific requirements. This proposal would require rulemaking to change the current requirements. However, under the existing NRC regulatory framework for 11e.(2) byproduct material, an analytical laboratory already can submit a request for a specific exemption to the need for a license for small quantities of byproduct material. The entity seeking the exemption would need to submit a request and provide bases for the exemption in accordance with 10 CFR 40.14.

General license

Under this option, Alexco proposes a new class of license for such byproduct material. However, the regulations in 10 CFR Part 40 only allow for possession of 11e.(2) byproduct material under a specific license. Modification of the regulations to allow for possession of 11e.(2) byproduct material under a general license would likewise require a rulemaking change.

Regulatory Issue Summary

Under this option, Alexco proposes that NRC staff issue a Regulatory Issue Summary (RIS) to exercise discretion on this issue. During the April 23, 2020 public meeting, Alexco stated this option was included to provide a mechanism for the NRC staff to communicate how it would address the two other options discussed above. However, a RIS is a guidance document that facilitates the clarification, not revision, of regulatory requirements.

The NRC staff observes that each of Alexco's proposed options ultimately leads to a stated desire for change to the existing regulatory requirements. Based on your letter and discussions during the public meeting, the NRC staff understands that Alexco had wanted this rule change to be included as part of the NRC staff's efforts on a proposed In-Situ Uranium Recovery (ISR) rulemaking. After considering Alexco's submittal, the NRC staff decided not to include its suggestions in the proposed in-situ recovery (ISR) rulemaking¹, if restarting that rulemaking is approved by the Commission, as the NRC staff determined that doing so would expand the scope of and significantly delay that rulemaking.

As noted above, under the existing regulations an applicant may request a specific exemption for a license for small quantities of byproduct material. Also, the NRC staff will continue to consider whether future rulemaking is appropriate. Consistent with internal rulemaking processes, before commencing any rulemaking activity, the NRC staff would develop a rulemaking plan and obtain Commission approval to proceed with such a proposal. Any rulemaking plan provided to the Commission would be publicly available. If approved, the status of the rulemaking could then be tracked on the NRC's public website <https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/RuleIndex.html>.

In accordance with Title 10 CFR Part 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

¹ SECY-19-0123, "Regulatory Options for Uranium in SITU Recovery Facilities" (ADAMS Accession No. ML19221B516) (December 16, 2019).

If you have any questions concerning the above, please contact Douglas Mandeville at 301-415-0724 or via email at Douglas.Mandeville@nrc.gov.

Sincerely,

/RA/

Patricia K. Holahan, Director
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

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