

STEEL MANUFACTURERS ASSOCIATION

Suite 907
1730 Rhode Island Avenue, N.W., Washington, D.C. 20036-3101
Fax: (202) 296-2506

Thomas A. Danjczek
President

(202) 296-1515
e-mail: danjczek@steelnet.org

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HAND DELIVERED

Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

DOCKET NUMBER
PROPOSED RULE **PR 30,31,32 170+171**
(64FR40295)

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USNRC

ATTN: Rulemaking and Adjudications Staff

RE: Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material, 64 Fed. Reg. 40,295 (July 26, 1999)

Dear Sir or Madam:

On behalf of the Steel Manufacturers Association ("SMA"), we submit the following comments regarding the United States Nuclear Regulatory Commission ("NRC") proposal to amend its regulations governing the use of by-product material in certain measuring, gauging, or controlling devices. 64 Fed. Reg. 40,295 (1999). NRC must implement a solution that addresses the problems of inadequate control and accountability upstream of the user, by regulating distributors and general licensees, rather than downstream, after the sources have been improperly discarded. Accordingly, we generally support NRC's proposal and wish to submit the following comments:

I. The Steel Manufacturers Association

The SMA is the largest steel trade association, by number of members, in North America, and the primary trade association of electric arc furnace ("EAF") steel producers that make steel from a feedstock of virtually one-hundred percent scrap. Several SMA members operate basic oxygen furnaces in which they make steel from both scrap and iron ore. The fifty United States member companies of the SMA are geographically dispersed across the country and account for almost half of total domestic steel production. Last year, the EAF steel industry recycled over 45 million tons of iron and steel scrap which would have otherwise been landfilled or littered the countryside. Steel is the nation's most recycled material, and SMA members comprise the largest recycling industry in the U.S. A list of SMA member companies is attached to this statement.

We believe that NRC's current regulatory regime, contained in 10 C.F.R. parts 30, 31, 32, 170 and 171, does not provide adequate regulatory control over generally licensed devices. Licensees can

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obtain certain devices easily and are not held accountable for the proper disposition of the sources they have purchased.

II. Consequences of Orphan Devices for SMA Members

On several occasions, generally licensed industrial devices have been improperly discarded in shipments of scrap destined for U.S. steel mills. The presence of spent radioactive sources in the ferrous scrap supply has produced significant, unanticipated economic consequences and health and safety risks to steel workers and the general public. We have noted the consequences and risks associated with orphan sources in several communications to NRC over the past eight years.

A. Steel Company Costs

SMA member companies have taken the initiative to keep radioactivity out of their mills, and have become the "second net" to catch improperly discarded sources that escape NRC's inadequate regulatory regime. Steel companies perform this function at considerable cost, as they must finance installation, use, and maintenance of detection equipment, production delays, and worker time for training and detection.

The steel industry has responded to the inadequate control of licensed devices by installing sophisticated detection systems to monitor all incoming shipments of scrap. Many SMA members have also installed additional detectors at the charge bucket to improve detection. While steel mills usually detect the sources, no system is completely effective in detecting sources buried in the middle of a truck load of scrap. If a steel mill inadvertently melts a radioactive source, it can incur \$10 - 24 million in unanticipated costs for decontamination, disposal of contaminated materials, and lost production time. The cost could bankrupt a minimill.

B. Public Health and Safety Risks

The impact of radioactive sources is not only economic. The health and safety risks are evident from the several documented incidents that have occurred in the United States and worldwide where lost sources have been stolen by petty thieves, abandoned in shuttered factories, or hidden under fences and in private homes. Radioactive sources in the scrap supply also present a risk to workers, if a source is accidentally breached in a scrap shredding operation, or melted down in a steel making furnace. Fortunately, radioactive sources have not brought serious consequences for worker health and safety, so far. There is clearly a public policy interest in holding general licensees accountable for the sources they use.

III. NRC's Current Program for Control and Accountability of Licensed Devices

Under NRC's current regulatory regime for control and accountability of licensed devices, there is little economic incentive to discard generally licensed radioactive sources properly. The

regulations enable members of the public to obtain a general license automatically and without filing an application.¹

This licensing regime renders it difficult for NRC to collect information directly from holders of certain radioactive sources. Consequently, NRC does not have sufficient control over generally licensed sources, and licensees have minimal accountability. The result is that sealed sources are often improperly discarded in shipments of ferrous scrap destined for steel mills.

We support recent NRC rulemakings in response to directives in the Staff Requirements Memorandum² on orphan sources, because they will improve NRC's control over the sources it licenses. On August 4, 1999, NRC amended its regulations to require a limited number of general licensees (5,100 out of a total of 45,000) respond to requests from NRC to provide information concerning the devices they own.³ On March 9, 1999, NRC announced in a direct final rule that it is revising its enforcement policy to provide amnesty to licensees who are out of compliance but report their violations and undertake corrective action.⁴ We encourage NRC to act in an expeditious manner in implementing these final rules, and in completing the rulemaking process for those pending or not yet proposed.

IV. NRC's Obligation to Improve Control and Accountability of Licensed Devices

NRC has a statutory obligation to protect public health and safety.⁵ NRC has been aware of the lack of accountability and control in its general license program at least since 1983, when the first known inadvertent melting of a radioactive source in a steel mill occurred. It is clearly within NRC's authority to amend its licensing regime to minimize the threat that radioactive sources pose to human health and safety, the environment, and to the economic viability of steel companies.

V. Comments on the Staff Draft Proposed Rule

On July 26, 1999, NRC proposed a fee-based annual registration program and clarified the requirements applicable to general licensees.

¹Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices, NUREG-1551, 10 (1996) (hereinafter "Working Group Report").

²Staff Requirements Memorandum from Annette L. Vietti-Cook, Acting Secretary, NRC (April 13, 1998).

³64 Fed. Reg. 42,269 (1999).

⁴64 Fed. Reg. 11,508 (1999).

⁵42 U.S.C. § 2011(b).

The member companies of the SMA have an interest in NRC's proposal not only because they are the unwilling recipients of improperly discarded sources, but also because they are general licensees and would therefore be held to many of the proposed new requirements. The additional burdens, including paperwork, reporting, and licensing fees, associated with NRC's proposals, comprise a modest insurance premium against the serious economic consequences, and the threat to public health and safety, that improperly discarded sources pose.

A. All General Licensees Should Be Registered

The proposed rule would require all general licensees to register. This requirement will help NRC ensure that all licensees are held accountable for their sources. A system that holds only a portion of licensees accountable could create an incentive for some licensees to try to opt out of the regulatory net by arguing that the registration system does not apply to them.

B. The Proposed Registration Fee is Reasonable

NRC proposes a registration fee of \$420 per licensee to cover NRC's costs of the registration program. The SMA believes this to be a modest and reasonable fee for all licensees, including small businesses.

The current regulatory regime has shifted the costs of lax accountability and control onto steel makers, insurers, and the taxpayers. General licensees do not pay directly for their licenses. The cost has instead fallen on steel producers to detect the sources, on the steel producers and taxpayers to arrange for proper disposal, and on steel producers and their insurers to pay the cost when a source is inadvertently melted. The cost has also fallen on the general public, in the form of increased risk to health and safety from unanticipated exposure to dangerous levels of radioactivity. General licensees, who benefit economically from the manufacture, sale and/or use of radioactive devices, should be required to shoulder their fair share to protect the public. Accordingly, an annual fee in the neighborhood of \$420 is not only equitable, but entirely reasonable.

C. Registration and Reporting Should Be Simplified

We support any registration format that simplifies licensees' reporting requirements while maintaining the quality of the data being reported, because it will encourage more licensees to report. We agree with NRC's proposal to send registration request forms to licensees to verify, correct and/or add to the information provided, similar to automobile registration renewals. We also support allowing licensees to report the required information to NRC without a form, assuming that the information is properly recorded and preserved.

D. Licensees Must Be Required To Register Even If NRC Fails to Contact Them

NRC must make it absolutely clear to all licensees that they are not excused from reporting requirements if NRC fails to contact them. New licensees should be required to register before receiving their sources. The registration requirement should include a provision that requires all general licensees to complete registration before twelve months after the date of the previous

registration certificate, or within twelve months of the receipt of a device subject to registration, whichever came first.

E. Licenses Should Designate a Responsible Individual and a Backup

The SMA supports the proposed requirement of designating a responsible individual ("RI") for ensuring compliance with NRC regulations, in instances where the licensee is a firm or organization. Licensees should also be required to designate a backup responsible individual ("BRI") to take over responsibilities of the RI if he or she leaves the company. This is a routine operational practice at SMA member companies, and it would significantly enhance licensee accountability if required and enforced at all licensee facilities. Furthermore, any limitations on operational flexibility imposed by designating an RI and BRI would be negligible compared to the risk to the licensee company from lost sources.

NRC should require general licensees who take over facilities containing devices to provide the name of the new RI and BRI. NRC should also require that the responsible individual RI and BRI have knowledge of the device, general license, and relevant regulations.

F. Time in Storage Should Be Limited

We support the proposed requirement to limit the period during which a device may be stored and unused to two years. We agree that when a device is not used for a prolonged period of time, it is susceptible to neglect and improper disposal. In fact, some licensees store sources as a way of avoiding the costs of proper disposal. This provision would compel licensees to decide whether to use, return, or properly dispose of their sources, and would hold licensees accountable for their decisions.

G. NRC Should Require Bankruptcy Notification

Bankruptcy notification would bring to NRC's attention facilities in which there is an increased likelihood of lost or improperly discarded sources. The requirement imposes little additional burden on licensees, and the possibility that they could lose their sources is heightened following bankruptcy. Therefore, it would not be unreasonable to require all licensees to comply with this requirement.

H. Recordkeeping Should Be Extended

The SMA supports the extension of the time period throughout which licensees must retain records on final disposition of devices, from three to five years after the expected useful life of the device or final disposition. We do not believe it is appropriate to include the phrase "if known," because licensees should be assumed to have knowledge of the useful lives of the devices in their possession and their final disposition.

I. Permanent Labelling Improves Traceability

The SMA supports the requirement of additional labelling on source housings. Steel companies have received on several occasions improperly discarded sources and source housings on which the label has been removed. A marking of the serial number on the source housing would alert NRC and the public to the existence of the missing source.

The SMA also supports the requirement that labels be embossed, etched, stamped, or engraved on the devices, for the reasons NRC listed in its proposal. Permanent labeling would help alleviate the problem of removed labels. It would also help prove criminally improper disposal, as the effort and deliberation required to remove such labelling would indicate the willfulness of the offense.

J. NRC Should Require Notification Prior to Purchase

Prospective licensees should be notified of general license requirements before purchase of devices. By providing notice of the regulations and potential cost of proper disposal, the prospective general licensee can make an informed decision before purchase.

K. The SMA Supports Establishment of a National Database

In its July 26, 1999 proposal, NRC stated that it is exploring the possibility of establishing a national database of generally licensed sources. Such a database could assist steel companies, the States, and others in finding the licensees of lost sources. The SMA supports this database and offers to work with the agency in its implementation. NRC should make as much data publicly available on a Web site, as possible, so that members of the public can trace the ownership of sources they find. If there is information in NRC's files that cannot be released to the public, for business proprietary or national security reasons, then NRC should have control over the information, but be required to assist in finding the owners of "lost" sources when there is an emergency notification.

VI. Conclusion

We support this proposal and urge swift implementation. We appreciate the NRC staff's efforts in drafting this proposal and look forward to working with the Commissioners and staff on the issues that we have raised.

Sincerely,



Thomas A. Danjczek

STEEL MANUFACTURERS ASSOCIATION
59 MEMBER COMPANIES

Tel: (202) 296-1515

Fax: (202) 296-2506

A.B. Steel Mill, Inc.
AmeriSteel
Arkansas Steel Associates
Auburn Steel Company, Inc.
Bayou Steel Corporation
Beta Steel Corporation
Bethlehem Lukens Plate
Birmingham Steel Corporation
Border Steel, Inc.
Calumet Steel Company
Cascade Steel Rolling Mills, Inc.
Charter Manufacturing Company, Inc.
Chicago Heights Steel
CitiSteel USA Inc.
Commercial Metals Steel Group
Compañia Siderurgica de Guadalajara, S.A. de C.V.
Connecticut Steel Corporation
Co-Steel LASCO
CSC, Ltd.
Deacero, S.A. de C.V.
FirstMiss Steel, Inc.
Franklin Industries
Gallatin Steel
Geneva Steel Corporation
Gerdau Courtice Steel Inc.
GS Industries
Hylsa, S.A. de C.V.
IPSCO Saskatchewan Inc.
IPSCO Steel Inc.
Ispat Inland Bar Products
Ispat Sidbec Inc.
J & L Structural, Inc.
Jersey Shore Steel Company
Kentucky Electric Steel Inc.
Keystone Steel and Wire Company
Koppel Steel Corporation
Laclede Steel Company
Lone Star Steel Company
Marion Steel Company
McDonald Steel Corporation
North Star BHP Steel Ltd.
North Star Steel Company
Northwestern Steel and Wire Company
Nucor Corporation
Oregon Steel Mills, Inc.
Pennsylvania Steel Technologies Inc.
Qualitech Steel Corporation
Republic Technologies International
Roanoke Electric Steel Corporation
Sheffield Steel Corporation
Slater Steel, Inc.
Steel Dynamics, Inc.
Stelco Group of Businesses
Sydney Steel Corporation
TAMCO
Tuscaloosa Steel Corporation
TXI (Chaparral Steel Company)
W. Silver, Inc.
Wheeling-Pittsburgh Steel Corporation

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Tampa, Florida
Newport, Arkansas
Auburn, New York
LaPlace, Louisiana
Portage, Indiana
Coatesville, Pennsylvania
Birmingham, Alabama
El Paso, Texas
Chicago Heights, Illinois
McMinnville, Oregon
Mequon, Wisconsin
Chicago Heights, Illinois
Claymont, Delaware
Seguin, Texas
Guadalajara, Jalisco, México
Wallingford, Connecticut
Whitby, Ontario, Canada
Warren, Ohio
Monterrey, N.L., México
Hollsopple, Pennsylvania
Franklin, Pennsylvania
Ghent, Kentucky
Provo, Utah
Cambridge, Ontario, Canada
Charlotte, North Carolina
San Nicolas de los Garza, N.L., México
Regina, Saskatchewan, Canada
Muscatine, Iowa
East Chicago, Indiana
Montreal, Québec, Canada
Aliquippa, Pennsylvania
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Wheeling, West Virginia