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PROPOSED RULE (52 FR 5992)

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OFFICE OF ENVIRONMENTAL PROGRAMS
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201 • AREA CODE 301 • 225-5780

TTY FOR DEAF: Balto. Area 383-7555
D.C. Metro 565-0451

Adele Wilzack, R.N., M.S., Secretary

William M. Eichbaum, Assistant Secretary

June 12, 1987

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

Dear Sir:

Thank you for the opportunity to review and comment on the advance notice of proposed rule change to 10 CFR Part 60, definition of "High-Level Radioactive Waste", published in the Federal Register on February 27, 1987. Issues addressed by this proposed rule change are critical to providing for a more orderly system for the management of all phases of nuclear waste disposal.

My response to the issues defined in your notice are discussed in the attachment to this letter. Please contact Mr. Othniel Thompson at this address or telephone number (301) 225-5793 should you have questions concerning this response.

I look forward to continued cooperation between the Office of Environmental Programs and the Nuclear Regulatory Commission.

Sincerely,

Max Eisenberg
Max Eisenberg, Ph.D., Director
Science and Environmental Health

ME:pk

cc: Mr. Ronald Nelson
Mr. David Resh

Attachment (1)

DS10
add: W. Clark Richard, NE-005
Jack Parry, H-1016

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Acknowledged by card.....

bcc: John E. McQuade, Jr.
Othniel Thompson

Comments prepared in response to Federal Register Notice/Vol. 52, No. 39/Friday, February 27, 1987 proposed rules, and a cover letter dated 3/13/87 from G. Wayne Kerr, Director, Office of State Programs.

Proposed changes to 10 CFR Part 60: Definition of High-Level Radioactive Waste.

Considerations of special concern highlighted by the Office of State Programs (OSP):

Response to Item 1:

The Office of State Programs asks for comments regarding section III D. of the Commission's comments. Section III D. of the Commission's notice discusses the States responsibility to provide for the disposal of low level radioactive waste pursuant to Section 3 of the Low Level Radioactive Waste Policy Act (LLRWPA) as amended in 1985 and then states that classification of "above class C" waste as HLW or non-HLW will have no impact on State Government responsibilities. This statement may not be totally correct. Although the States do not have the responsibility for "above class C" low level radioactive waste, it is not clear how the federal government's responsibility in this area will be implemented. It is also not clear that any government agency, federal or state, has the responsibility for radioactive waste concentrations greater than class C low level radioactive waste which result from the use of naturally occurring or accelerator produced radioactive materials (NARM). Anytime there is a hazardous material for which government is not responsible, the presence of this material requires that State Government address its safe management and disposal. Consequently, actions taken by the Commission to define greater than class C Low Level Radioactive Waste as high level radioactive waste (HLW) or non-HLW will have a definite impact on State programs.

Response to Item 2:

Changing the Commission's definition of HLW is applicable to the management of waste generated as a result of the presence or use of naturally occurring or accelerator produced radioactive materials (NARM). The applicability can be more fully realized however if the U.S. Congress amends the Atomic Energy Act to give the Commission the authority to regulate NARM. Because there is not a federal agency which currently regulates the use of NARM there is a lack of uniformity in the regulation of these materials. States, in some instances, do very little if anything to regulate NARM, while other states apply basically the same requirements to NARM as they do by-product materials. It is therefore highly unlikely that the Commission could successfully manage the disposal of these materials at a disposal site, since the manner in which they are received may vary from state to state and the Commission does not have the authority to enforce any code regarding NARM.

When the Commission carries out its proposed analysis, described in II(B.2 and IV.8) of the Commission's notice, to identify "other highly radioactive material that requires permanent isolation", NARM should definitely be included in this analysis. The analysis should include a definition of regulatory practices and procedures which are necessary to insure the safe disposal of NARM.

The definition of regulatory practices and procedures necessary to insure the safe disposal of NARM should include procedures to regulate all aspects of NARM including the licensing of source production and utilization.

Issues In The Federal Register For Which The Commission Request Public Comments.

Response to Question 1:

It would only be practical, especially in view of the need to have the Commission's requirements consistent with those of the Nuclear Waste Policy Act of 1982, to utilize the first option discussed in IV 1. for defining HLW. Language in clause (A) would allow for the partitioning of certain waste into HLW or non-HLW and may result in more economical disposal options.

Provisions under clause (B) of the first option may have the greater benefits to public health and safety if the Congress amends the Atomic Energy Act to give the Commission the authority to regulate NARM. This would provide a basis, which does not presently exist, for uniformity in the regulation of both the production and use of NARM.

Response to Question 2:

Current class C concentration limits of 10 CFR Part 61 are appropriate to identify radionuclide concentrations which are "highly radioactive" for purposes of clause (B) of the Nuclear Waste Policy Act definition. It would not be productive to develop an alternative set of concentration limits.

Based on the small volume of class C waste currently generated on an annual basis and the high radioactivity in this small volume it may be more economical to have the Nuclear Regulatory Commission make provisions to dispose of these waste at a U.S. Department of Energy facility. Under such an arrangement all of this material could be disposed of at one facility. Facility management cost would be much lower than repeating these costs at each low level waste disposal site around the country.

Response to Question 3:

The Commission in II B.2 "Permanent Isolation" of the notice, defines the approach which the Commission proposes to pursue to determine which wastes require permanent isolation, then includes a brief description of each step in the approach. In question 3, the Commission asks if the Commission's analysis is appropriate for identification of concentrations requiring permanent isolation.

The Commission's approach outlined in II B.2 of the notice does not constitute an analytical method and consequently cannot be evaluated as such. The approach which has been presented appears to be a reasonable one. However, analytical methods to be used by the Commission should be developed in draft and released for public comment.

Response to Question 4:

Maryland has not identified any specific environmental consequence associated with the matters discussed in this notice. Changing the HLW definition by the Commission and amendment of the Atomic Energy Act as discussed in our comments will result in a more uniform management of NARM materials in production, utilization and disposal and should have a positive environmental impact.

Response to Question 5:

Low Level Radioactive Waste classes A, B, and C as identified in regulations 10 CFR Part 61 section 61.55 and suggested state regulations Part D Sections D.307, classification of Radioactive Waste for Near-Surface Disposal should be sufficient to define concentrations of waste which should be disposed of by the federal government.

The U. S. Nuclear Regulatory Commission should amend 10 CFR Part 61 section 61.55 to include Radium 226 concentrations for radioactive waste classes A and C. The commission should adopt the concentrations which are in Part D Section D.307, classification of Radioactive Waste for Near-Surface Disposal, recommended by the Conference of Radiation Control Program Directors, Inc.

Response to Question 6:

Legal and administrative questions will be raised by the expansion of the definition of HLW if the Commission attempts to become involved with the disposal of NARM without an amendment to the Atomic Energy Act to provide the Commission with the appropriate authority to regulate these materials.

Response to Question 7:

Requirements that a particular type of waste be disposed of in a specific type facility would discourage development of new and innovative technologies regarding the disposal of HLW.

Response to Question 8:

NARM should very definitely be included in the Commission's proposed analysis to identify "other highly radioactive material" that requires permanent isolation.