

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mar 24, 1999

Mr. Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Paperiello:

Thank you for your letter requesting our comments on the NRC regulations being developed for domestic licensing of special nuclear material. We have reviewed the material you provided and have the following comments.

As you are aware, Section 112(r) of the Clean Air Act requires EPA to promulgate regulations for chemical accident prevention at U.S. stationary sources. These regulations are contained in 40 CFR part 68, and require facilities holding more than a threshold quantity of any of 140 listed chemicals in a process to implement a risk management program. The risk management program consists of four major parts: a hazard assessment (consisting of an offsite consequence analysis and five-year accident history), an accidental release prevention program, an emergency response program, and submission of a risk management plan (a summary of the risk management program) to the EPA. For most covered facilities, the accidental release prevention portion of the risk management program basically requires facilities to implement certain elements of OSHA's Process Safety Management standard (facilities judged to be of highest risk to the public must implement virtually all elements of the OSHA standard).

Section 112(r) of the Clean Air Act also contains a "general duty" clause (112(r)(1)), which requires owners and operators of facilities handling any extremely hazardous substance to identify hazards which may result from accidental releases of such substances, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. This clause has been enforceable since 1990, and can be used by EPA as a discretionary oversight mechanism for any facility which produces, processes, handles, or stores extremely hazardous substances, regardless of whether or not that facility is subject to the risk management program regulations. There is no specific list of chemicals to which the general duty clause applies; it applies to any chemical which may, as a

result of a short term exposure cause death, injury, or property damage due to its toxicity, reactivity, flammability, volatility, or reactivity.

Consequently, as your letter notes, some NRC-licensed facilities are likely to be subject to EPA (or delegated States) regulation and oversight either by virtue of their having certain substances (such as hydrogen fluoride) regulated under 40 CFR part 68, or by virtue of the general duty clause of CAA section 112(r)(1), or both. EPA believes that the proposed revisions to NRC licensing regulations are consistent with the accident prevention portion of EPA's risk management program regulations and the general duty clause of the Clean Air Act. For example, the proposed NRC regulations require facilities to implement a safety program based on the results of an integrated safety analysis. Similarly, the EPA regulations (and OSHA PSM standard) require facilities to perform a process hazard analysis and take necessary actions to control any hazards identified, as well as implementing other common features of industrial safety programs, such as written operating procedures, mechanical integrity programs, incident investigations, etc. The remaining portions of the EPA regulations are generally not duplicated in other federal regulations, including the forthcoming NRC regulations.

As EPA must retain authority to implement and enforce 40 CFR part 68 regulations and the general duty clause, we request that you include in your forthcoming regulations an explicit acknowledgment that this authority extends to applicable NRC-regulated facilities. It may also be appropriate to explain (in the preamble) EPA's accident prevention responsibilities under the Clean Air Act and the applicability of the risk management program regulations, similar to your explanation of OSHA's responsibilities and applicable regulations. Finally, we would also request that you avoid taking any regulatory action which might inadvertently inhibit or restrict EPA's authority under 40 CFR part 68. Thank you for the opportunity to comment on your proposed regulations. If you have any questions, please contact Mr. James Belke of my staff at (202)-260-7314.

Sincerely,

/s/

Jim Makris, Director

Chemical Emergency Preparedness and Prevention Office