September 13, 1996 SECY-96-200

FOR: The Commissioners

FROM: James M. Taylor, Executive Director for Operations
/s/

SUBJECT: UPDATED STATUS OF THE NRC RECYCLE AND REUSE RULEMAKING PLAN

PURPOSE:

This paper is to inform the Commission that the scope of the Environmental Protection Agency (EPA) rulemaking on recycle apparently has changed since the NRC staff plan on a recycle rulemaking (SECY-94-221) was reviewed by the Commission. The contemplated changes by EPA potentially could affect details of the Nuclear Regulatory Commission's rulemaking plan on recycle and reuse, but should not cause significant problems in its implementation.

SUMMARY:

For several years, both the EPA and the NRC have contemplated rulemakings for recycle of radioactively contaminated materials. Originally, these rulemakings were oriented toward the needs of the Department of Energy (DOE) and the NRC licensees, respectively. In the past, EPA focused on the restricted recycle of DOE scrap--primarily, to be remanufactured as containers or shielding for radioactive material. The staff plan for the NRC rulemaking was previously reviewed by the Commission (SECY-94-221) in that context. Now there are apparent indications that the scope of the intended EPA rulemaking has changed. As a result, there are new options on the nature of the NRC rulemaking with respect to scope, form, timing, and public participation.

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BACKGROUND:

On March 16, 1992, the NRC and the EPA signed a Memorandum of Understanding (MOU) to foster cooperation between the two agencies to provide a framework to resolve issues, avoid duplication, and focus priorities (57FR54127). The MOU established that the agencies will actively explore ways to harmonize risk goals and will cooperate in developing a mutually agreeable approach to risk assessment methodologies for radionclides. In an April 15, 1992, SRM (SECY-92-045), the Commission directed the staff to conduct an enhanced rulemaking on radiological criteria for decommissioning (the "cleanup rule") and to also move forward on other initiatives, including developing criteria for recycle. The Commission also directed the staff to be sensitive to the potential impact that initiatives, such as a recycle rulemaking, might have on the cleanup rule. SECY-92-045 had indicated that the recycle rulemaking would be deferred until after completion of the cleanup rule so as to benefit from the insights gained from the cleanup rulemaking.

At the direction of the Commission, the staff submitted a rulemaking plan (SECY-94-221, "Staff Action Plan for an Enhanced Participatory Rulemaking" (Attachment 1)) for recycle and reuse criteria in August 1994. The Commission in its response did not object to implementation of the proposed plan (Attachment 2). The major elements of that plan were: a) initiate a recycle rule after finalization of the cleanup rule; b) cooperate with the EPA in the development of the rule; c) develop the technical basis and regulatory products needed to support a rule on recycle/reuse; and d) conduct public enhanced participatory rulemaking workshops (EPR) similar to those used in the cleanup rulemaking process. Based on the projected date of completion of the cleanup rule, the initiation of the recycle/reuse EPR in SECY-94-221 was scheduled for the fall of 1995.

The staff has made progress in certain areas of the plan described in SECY-94-221. In particular, there has been coordination with EPA (Item b of the plan) and development of the technical basis for rulemaking (Item c of the plan). An interagency team of NRC, EPA, and DOE technical leads and their respective contractors has been working collectively to develop scenarios and parameters to model doses and risks caused by recycling scrap metal. The Federal technical leads of this team are also representatives to the Recycle Subcommittee of the Interagency Steering Committee on Radiation Standards (ISCORS). The Department of Defense has been invited to participate with the Interagency team.

In 1994, when the Commission was informed of the action plan for this rulemaking, the EPA was considering a rule limited to

restricted recycle for nuclear purposes (e.g., shielding, waste containers). Apparently, their thinking has evolved to considering only a rulemaking for *clearance*. Clearance is the internationally accepted term for release from jurisdiction of a regulatory authority--or unrestricted release. Clearance does not include restricted recycle by definition. At present, based on statements by EPA management at meetings of the ISCORS, co-chaired by NRC and EPA, it appears that EPA intends to promulgate, by its authority under the Atomic Energy Act (AEA), a generally applicable rule to address scrap metals for clearance.

There may not be a perfect overlap between the scope of the EPA efforts and the needs of the NRC licensees and the Agreement States. Based on preliminary information from interaction with EPA during our interface efforts, EPA does not intend to address scrap contaminated with naturally-occurring radioactive material (NORM), reuse of equipment, restricted release, nor other materials such as concrete in the present rulemaking. However, these other materials and regulatory areas may be addressed by EPA in subsequent rulemakings. EPA appears to be considering a rule that would include a table of clearance concentrations of contamination that would correspond with the internationally accepted trivial individual dose level of 10 Sv/y (1 mrem/y) per practice (IAEA Safety Series No. 89, 1988).

The NRC would be required under the AEA to implement any EPA generally applicable standards with consistent regulations for NRC licensees. The NRC staff believes that it is important to be in a position to critically support and comment on the technical basis for rulemaking developed by EPA as those bases are developed. Thus, the technical efforts of the NRC have kept in pace with those of the EPA. This risk assessment work is ongoing and completion of the technical basis for a rule is scheduled for the Winter of 1997.

Since EPA plans to promulgate their recycle rule as a broadly applicable standard under the AEA, their cost/benefit models will necessarily include NRC licensees. The NRC plans to make use of the EPA models for its own regulatory products and thus realize cost savings and governmental efficiency for the NRC’s Regulatory Impacts Analysis and Generic Environmental Impacts Statement. The respective staff’s are coordinating the development of the EPA models to ensure that NRC and Agreement States’ needs are identified and addressed.

Based on the ongoing dialogue between the NRC and EPA technical staffs, it is EPA’s plan to begin public outreach efforts in the fall of 1996, in a series of small meetings with stakeholders representing a specific viewpoint. Following these meetings the EPA staff will prepare a pre-proposed rule for public comment in December 1996, and follow with a public workshop early in 1997.

EPA's goals are to publish a proposed rule in mid-1997 and finalize it in mid-1998. It is possible that current EPA thinking on the scope of their rule could change as a result of the input received during the meetings with stakeholders.

With respect to the public outreach process, analysis of the costs and benefits (SECY-95-301) of the efforts associated with the enhanced participatory rulemaking process(EPR) for the proposed cleanup rule indicated that the incremental costs were approximately $1 M and 112 person-weeks. Benefits included: 1) strong support of the process in public comments; 2) enhanced stakeholder networking; 3) surfacing significant issues; 4) focus on issues supported by an issues paper developed for the process; 5) constructive dialogue as contrasted to negative and hostile reactions and involvement of Congress. The Commission paper also made clear that the EPR process may be any of a spectrum of activities to involve stakeholders. In short, the EPR process involves proactive outreach to stakeholders, and is beyond the usual notice and request for comment in the Federal Register (FR). Because the EPA rule will include consideration of the NRC and Agreement State licensees, cost efficiencies in the public outreach area can be achieved by NRC co-participation with EPA in their stakeholder outreach activities.

DISCUSSION:

The issuance of an EPA rulemaking covering clearance raises some of the same issues regarding statutory authorities and the manner in which NRC should proceed with rulemaking that were addressed in some detail for the cleanup rule in SECY-96-082. Specifically, these issues revolve around the fact that EPA has the statutory authority to establish generally applicable environmental standards for the protection of the environment from radioactive materials and that NRC is obligated to implement and enforce any final standards that might result from EPA rulemakings in these areas for NRC licensees.

Based on the change in direction of the EPA's rulemaking and on the respective authorities of the two agencies, the NRC staff anticipates the following two potential options for NRC's rulemaking: 1) EPA prepares a proposed rule on recycle that is sufficiently broad in scope and adequate in form to meet the most significant needs of NRC licensees. The NRC staff would then prepare a proposed rule that incorporates the EPA rule into the 10 CFR by reference and draft a regulatory guide on implementing the EPA rule; or 2) EPA prepares a rule which resolves some but not all the needs of NRC licensees (e.g., the EPA rule scope is limited to clearance of metals, but does not cover reuse, other materials, or restricted release). The NRC staff would then prepare a rulemaking that conforms to the EPA rule, but which also addresses the remaining issues relevant to NRC licensees.

Neither of the options is expected to cause significant problems for the NRC staff in implementing its rulemaking plan. The staff plans to continue its close coordination and cooperation with EPA in the recycle and reuse rulemaking efforts, including development of technical underpinnings. We expect the EPA to have formulated its pre-proposed rule and responded to both stakeholder and public comments on the pre-proposal by the Spring of 1997. The responses to comments are expected to reflect any changes from the current thinking of the EPA staff on the scope, form, implementation, and timing of their recycle rule. The staff believes that the pros and cons of NRC's rulemaking options will be better defined and less speculative at that time. The NRC staff, with input from the Agreement States, will then inform the Commission of the EPA's progress and seek guidance on a proposed NRC rulemaking plan for recycle and reuse.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

original /s/ by

James M. Taylor
Executive Director
for Operations

Enclosures:
1. SECY 94-221, dtd, August 19, 1994
2. SRM, dtd, September 2, 1994

COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

original /s/ by
James M. Taylor
Executive Director
for Operations

Enclosures:
1. SECY 94-221, dtd, August 19, 1994
2. SRM, dtd, September 2, 1994

RECORD NOTE: A draft copy of the commission paper was sent to OIG for information on 8/19/96

August 19, 1994 SECY-94-221

FOR: The Commissioners

FROM:
James M. Taylor, Executive Director for Operations /s/

SUBJECT: STAFF ACTION PLAN FOR AN ENHANCED PARTICIPATORY RULEMAKING FOR RECYCLE/REUSE CRITERIA

PURPOSE:

To inform the Commission of the staff action plan for preparation of a enhanced participatory rulemaking (EPR) for recycle/reuse criteria in response to the request in the Staff Requirements Memorandum (SRM) of March 10, 1994.

SUMMARY:

In response to the SRM, COMFR-94-001, the staff has prepared a plan for the timing and conduct of an EPR on recycle of contaminated materials and equipment. The plan provides for completion of technical underpinnings to assess dose modeling methods, costs and impacts, for preparation of an issues paper, for contracting of necessary facilitator support, and for coordination of efforts with the EPA.

BACKGROUND:

In an SRM dated March 10, 1994, the Commission directed the staff to develop a schedule and plan for an EPR to establish radiological criteria to be used to determine whether slightly contaminated equipment and material from nuclear facilities could be intentionally released by licensed facilities into general commerce for the purpose of recycling or reuse of the material. Initiation of this effort could be the second EPR undertaken by the staff.

This paper responds to the specific direction to the staff in the SRM regarding development of a schedule and plan for an EPR on recycle/reuse. There may be other rulemakings which would also be candidates for an EPR process.

DISCUSSION:

Proposed Action being considered:

The proposed action being considered is the establishment of criteria for the recycle/reuse of materials and equipment from nuclear facilities, including release of these materials for both unrestricted and restricted recycle. NRC staff has initiated technical assistance contracts, described below, to provide support for the proposed action.

The SRM dated March 10, 1994, directed the staff to consider an EPR on this subject and specifically directed that the following issues be investigated: 1) whether slightly contaminated materials resulting from decommissioning activities might be used for certain useful commercial or industrial purposes (e.g., industrial uses such as in reinforcing rods, highway bridge structural steel, industrial equipment, concrete aggregated for roadway construction, etc.); 2) whether slightly contaminated material should be excluded from some commercial or industrial uses; and (3) what criteria (including level of residual contamination) should be utilized in determining which materials might be used for or excluded from such purposes. The uses noted in the SRM represent a form of restriction on possible uses and would be considered in addition to the unrestricted recycle/reuse scenarios.

This paper presents issues related to both unrestricted and restricted possible recycle/reuse scenarios and rulemaking.

Current Recycle/Reuse Policies in the NRC and Elsewhere

In a earlier effort related to recycle rulemaking, described in SECY-85-373, NRC reviewed a 1980 DOE petition to establish exemptions for small concentrations of technetium-99 and/or low-enriched uranium as residual contamination in smelted alloys which would allow DOE to salvage its smelted alloys into commercial channels. A proposed rule which would have granted the DOE request was published in October 1980 (45FR70874), and a draft environmental statement (NUREG-0518) was also published by NRC at that time. As noted in SECY-85-373, over 3700 comment letters were received overwhelmingly opposed to the potential introduction of radioactive material into commercial products. Following review of the comments, and based on the difficulty involved in preparing a environmental statement at that time which would adequately consider the exposure pathways associated with recycle, the staff recommended in SECY-85-373 that the Commission deny the DOE request for rulemaking action without prejudice to its resubmittal and withdraw the proposed rule. This action was approved by the Commission, and the Notice of

Withdrawal published in the Federal Register on March 14, 1986, 51FR8842.

At the present time, release of material and equipment from licensed facilities is determined on a case-by-case basis using the following existing guidance and practices: radiation surveys to document the absence of licensed radioactive material; the general guidance contained in Regulatory Guide 1.86 or the similar guidance issued by NMSS; and site-specific technical specifications and license conditions. Although these criteria were not originally derived for the case of recycle, they have been applied for many years, and in a relatively wide variety of contexts. The staff continues to review such requests on a case-by-case basis with the general objective of ensuring individual doses to workers and members of the public would remain a small fraction of the public dose limit in 10 CFR Part 20 (e.g., no more than a few millirem/yr dose to the average member of the Critical Population Group) and collective doses that are suitably small and As Low As is Reasonably Achievable.

In the Supplementary Information for the proposed rule on radiological criteria for decommissioning of lands and structures (SECY-94-150), it is noted that the Commission plans to consider separately the issues of how to deal with cases where the licensee proposes to release material containing residual radioactivity intentionally for reuse or recycle. Such release could be either as part of decommissioning or ongoing operations. In the interim the Commission continues to review these actions on a case-by-case basis.

As examples of case specific reviews, NRC did not object to the export of slightly contaminated nickel to Spain (SECY 93-213) with the intent to recycle the nickel into stainless steel because the export was within the general license export limits in Part 110 of the Commission's regulations. NRC also authorized Allied Signal in 1991 to recycle contaminated calcium fluoride for use in steel smelting. In the analysis that supported this release, the staff concluded that the radiological risk associated with the recycled calcium fluoride may be less than that associated with virgin material because of low concentrations of radium in the calcium fluoride contaminated with uranium. NRC has also received a request from Nuclear Metals, Inc., a site listed on the Site Decommissioning Management Plan, to release a large volume of copper contaminated with depleted uranium up to 300 pCi/g, however a decision has not been made yet because there may be a potential use of copper in ornamental objects.

Other countries and the International Atomic Energy Agency (IAEA) have devoted more efforts than have been applied in the U.S. in

the development of criteria for recycle of material contaminated with residual radioactivity from previous operations. These efforts include those of the IAEA in determining criteria for exemptions and the application of those criteria to the specific case of recycle. Enclosure 2 provides the criteria contained in Safety Series No. 89 for the exemption of radioactive materials from control. Specific instances of recycle of certain materials has also been undertaken in individual countries. Most of these efforts have been under the general guidance contained in Safety Series No. 89.

The Environmental Protection Agency (EPA) has indicated that it intends to pursue exploring development of recycling criteria as part of a comprehensive rulemaking in the area of waste management that was discussed at a meeting of the National Advisory Council on Environmental Policy and Technology (NACEPT) in May 1994. EPA staff has indicated that its initial plans are for a rulemaking which would examine recycle in only a limited manner, and in
particular, initially only deal with restricted recycle for nuclear purposes (e.g., shielding, waste containers). The Department of Energy (DOE), in the operation of its facilities, may release slightly contaminated material on the basis of a case-specific cost-benefit analysis in accordance with DOE Order 5400.5.

Need for Establishment of Criteria

Current NRC regulations do not contain explicit radiological criteria for release of equipment and materials for recycle/reuse. As noted above, release of material is presently allowed on a case-specific basis using existing guidance. Interest in recycling slightly contaminated materials is growing both in the United States and in other countries. Its primary purposes are to conserve resources by limiting the amount of new raw materials which are necessary to produce the products and equipment needed for industry and consumers and to reduce the costs of disposing of large volumes of slightly contaminated material that may pose very small risks to the general public.

Codifying criteria for recycle of materials would allow NRC to more effectively deal with this increased interest in recycling while carrying out its function of protecting public health and the environment. It would provide for more efficient use of NRC and licensee resources, consistent application across all types of licenses, and a predictable basis for planning for release of such material. In addition, it would allow for development of criteria in light of changes in basic radiation protection standards, improvements in radiation detection technologies, and experience obtained in recent years.

A specific aspect which also needs to be considered are the incidents involving discoveries of radioactive materials in metal scrap in the U.S. One potential source of this contamination comes from industrial sealed sources and devices. This problem is addressed in the SRM which directed the staff to include issues raised by steel manufacturers in the accidental smelting of gauges which contain radioactive material.

Current Staff Activities Related to Establishing Criteria

In SECY-92-045, "Enhanced Participatory Rulemaking Process," the staff indicated that rulemaking related to recycle criteria, including preparation of a GEIS, would be deferred pending completion of rulemaking on radiological criteria for decommissioning of lands and structures so as to take into account insights gained in conducting the decommissioning EPR, and because resources needed to conduct more than one interactive rulemaking simultaneously would represent a significant impact on both NRC staff and participants (most of whom would be the same for decommissioning and recycle). SECY-92-045 also stated that work on technical underpinnings related to establishing criteria for recycle would continue.

As part of the effort to establish technical underpinnings to support recycle criteria, the staff has a contract in place entitled "Recycle of Material from Nuclear Facilities" to provide technical assistance to NRC in development of an information base, technical models, and a regulatory approach related to recycle/reuse of materials and equipment from nuclear facilities. This contract consists of four principal tasks including 1) a review of existing literature; 2) pathway modeling and analysis and dose assessment to provide the technical bases for developing criteria; 3) assistance in preparation of an issues paper; and 4) assistance in preparation of regulatory products (rulemaking, GEIS, regulatory analysis).

In particular, Task 2 develops individual and collective dose conversion factors (DCF's) for recycle and reuse scenarios and pathways (this task provides information for recycle which is similar to that in NUREG/CR-5512 which forms the technical basis for the decommissioning EPR). A draft report describing the technical approach for Task 2 was submitted by the contractor in May 1994 and is under staff review. The current schedule calls for a draft Task 2 report in the Summer of 1995. Task 3 develops an issues paper which would consider regulatory alternatives, the range of possible dose criteria, and possible restrictions on use. Task 4 would include a NEPA analysis of rulemaking alternatives, and would contain an analysis of individual and collective radiological and non-radiological impacts and costs of decontamination, surveying (measurability issues), costs saved, if any, of non-mined material, etc, and background considerations.

Areas needing to be addressed as part of a Recycle EPR

Although detailed issues have not been developed for a recycle/reuse EPR, preliminary considerations, based on experience gained from the decommissioning EPR and on information developed to date as part of the contract on technical underpinnings, have indicated that the following areas will need to be addressed as part of the recycle EPR:

1. Procedural Aspects

    a. Rulemaking Approach - the procedural approach of the rulemaking should be similar to that of the decommissioning EPR. The rulemaking on radiological criteria for decommissioning was the first rulemaking to be conducted with an enhanced participation format where NRC solicited early input by affected interests on the approaches and rationale for rulemaking alternatives. This approach was highly successful in exploring the issues associated with establishing radiological criteria

for decommissioning, and resulted in a large volume of input, ideas, and comments which were used by the staff in the preparation of the proposed rulemaking for Commission consideration (SECY-94-150).

The decommissioning EPR included seven workshops conducted throughout the United States to solicit viewpoints and comments from interested parties. In addition, public scoping meetings were held in four cities on the content and scope of the Generic Environmental Impact Statement (GEIS) prepared in support of the rulemaking. The staff envisions that a similar process, including the preparation of a rulemaking issues paper to serve as a vehicle for discussion at the workshops, would be appropriate for an EPR on recycle of materials and equipment. The issues associated with the recycle of materials and equipment are similar to those discussed in the rulemaking on radiological criteria for decommissioning, in the sense that there will be strong interfaces with waste management, protection of individuals, and protection of populations. The issue of recycle will be different, however, in that the modeling and assumptions necessary to adequately determine these impacts will be more complex, and the pathways of exposure potentially more complicated. One difference from the process used in the decommissioning EPR is that the staff would propose to include scoping for the GEIS on recycle in the rulemaking workshops at the beginning of the process. This proposal would result in there not being an apparent need for a separate set of public scoping meetings on the GEIS. This revised process is based on experience gained from the decommissioning EPR in which similar issues and concerns were raised at both the rule workshops and the GEIS scoping meetings.

b. Use of a Facilitator - use of a facilitator similar to that used during the decommissioning EPR is critical to conducting the recycle EPR. The rulemaking workshops conducted by the staff in support of the radiological criteria for decommissioning were facilitated by the Keystone Center under an interagency agreement with the Environmental Protection Agency. The Keystone Center contributed to the convening process for the workshops, by establishing contacts with participants to develop initial views and provide information on the process and expectations, and by conducting workshops in such a way that the NRC staff could participate as an equal party to the discussions without the added burden of controlling the workshop flow. The staff believes that independent third party facilitation services will continue to be

important to the success of future enhanced participatory rulemakings, such as the rulemaking on the recycle of materials, as well as for other types of public workshops on specific issues or sites. However, the critical need for the staff to obtain effective facilitation services in a timely manner under direct control of the NRC means that the normal procurement process may not be appropriate. A separate Commission paper on procurement options for obtaining facilitation support is discussed in Enclosure 3. Based on the discussion in Enclosure 3, it is anticipated that a procurement mechanism can be selected which can be implemented in time to support the recycle EPR.

c. During the workshops on radiological criteria for decommissioning, the staff initiated use of an electronic bulletin board system (BBS) to facilitate communications between the NRC staff and interested parties, and to increase the availability of documents in a timely manner. The BBS has been a tremendous success, with over 1,200 users and 3,600 calls logged. The staff believes that the development and use of a BBS would be essential for the enhanced participatory rulemaking on recycle of materials. It is expected that, as lessons are learned in the decommissioning EPR, that continued improvements will be made in the use of the bulletin board.

d. Coordination with EPA - as noted above, EPA is also considering rulemaking related to recycle. The EPA schedule tentatively calls for a proposed rulemaking in the Fall of 1995. The NRC staff believes that considerable benefit can be derived from cooperative efforts and parallel considerations of recycling issues. In particular, if the schedule proposed by the EPA remains relatively stable, the EPA proposals for restricted recycle should be available at about the time the staff would be in the position to prepare an issues paper on the more general issues of recycle. Thus, the EPA proposals and rationale could help focus the discussion, and comments received on the issues paper would be of benefit to both EPA and NRC. The staff does not believe that a proposed rulemaking on the limited aspect of restricted recycle would foreclose any fruitful discussions on the more general topics of unrestricted recycle, and would, in fact, help serve to focus those discussions.

2. Technical Aspects

a. Dose Models - a substantial amount of work needs to be done on the development of technical underpinnings for the

recycle rulemaking. This work is similar to that contained in NUREG/CR-5512 which was prepared to form the technical basis of the decommissioning EPR. Significant analyses will need to be conducted regarding approaches, parameters, pathways, etc. The development of the technical basis is, of course, a somewhat iterative process of examining pathways and models and revising those models on the basis of public input. The staff expects that the workshops will disclose other pathways or scenarios that have not been explicitly addressed in the initial technical basis work. However, discussions of pathways must begin with some baseline. The staff would make it clear to participants that the initial technical basis work was conducted to prepare such a baseline, and that other pathways and scenarios that are developed during the workshops will also be considered for inclusion in the final analysis supporting the GEIS and Regulatory Analysis.

b. Costs and Impacts - technical underpinnings will need to be developed regarding costs for decontamination and for surveys of equipment and materials to be released at low residual dose levels. This work is similar to that performed for the GEIS (Appendices A, C, and D) on the decommissioning EPR under contract to NRC by EML, PNL and ORISE, respectively. This work will be done during Task 2 and 4 activities of the existing recycle contract.

   Technical underpinnings will also need to be developed regarding the individual and collective radiological and non-radiological impacts associated with recycle. In a manner similar to that in Appendix B of the GEIS on the decommissioning EPR, this would include consideration of such parameters as numbers of persons exposed to radioactivity in recycled materials, radiation exposures to persons performing decontaminations, non-radiological impacts on persons during transportation or during mining of fresh metal, use of collective dose considerations in decision-making when individual doses are below the "trivial dose" level used by the IAEA, etc. This work will be done during the Task 2 and 4 activities of the existing recycle contract.

c. Alternative Regulatory Actions - using the cost and impact analyses, alternative rulemaking actions related to recycle would be evaluated in accordance with the National Environmental Policy Act (NEPA) which requires all Federal agencies to consider the effect of their actions on the environment. This may require preparation of a generic environmental impact statement similar to that prepared

for the decommissioning EPR. This work would be done during Task 4 activities of the existing recycle contract after the workshops and scoping meetings discussed in Item 1a above.

Alternatives which would be evaluated in a GEIS based on the assessment of impacts and costs from 2.b above would likely include: (1) the unrestricted release of equipment and materials for recycle/reuse; (2) restrictions on release and recycle/reuse of material to only certain allowable uses. Such restrictions might include limiting use to licensed nuclear purposes only, or to other specific non-nuclear commercial or industrial uses such as those described in the March 10, 1994, SRM; and (3) not permitting recycle/reuse. As noted above, EPA is confining its initial efforts to restricted use for nuclear purposes. For restricted uses, the regulatory process that would insure that the material would remain in restricted use has not yet been determined. Analysis of technical aspects of the alternatives is being done under Task 2 of the existing recycle contract. Consideration of regulatory and other societal aspects of the alternatives would be done during Task 3 and 4 activities. The staff believes that the workshops should include discussions on the alternatives in order to obtain the input necessary for our decision process in rulemaking.

d. Accidental contamination incidents - review of incidents related to accidental contamination of scrap metal and determination of whether and how this matter should be handled on a regulatory basis need to be performed. Currently, statistics on incidents have been collected but an analysis of the extent of the incidents or health or economic effects have not been studied in detail. The existing recycle contract does not treat these issues. Decisions will have to be made as to the analysis necessary for these incidents, and on how and whether to incorporate incidents into a recycle EPR.

Schedule and Resources for EPR on Recycle

As noted above, recycle rulemaking has been previously deferred because of: (1) the need for technical information, (2) the need to assess results and conclusions of the first EPR, and (3) the need for resources to complete both efforts (for example, the EPR for decommissioning criteria currently takes 5 staff years from the Environmental Policy Section of RPHEB; recycle rulemaking could require a similar level of effort).

Developing the schedule for the recycle EPR continues to depend on development of technical underpinnings and availability of resources. Current considerations regarding these issues are as follows:

1. Technical underpinnings

   Developing the technical underpinnings prior to initiating the recycle EPR is critical both from the standpoint of developing the needed information in a timely way and also of developing a quality rule product based on sound technical information.

   A difference in setting the schedule for the recycle EPR compared to the decommissioning EPR is that when the final decommissioning EPR schedule was being established, a principal technical underpinnings document, NUREG/CR-5512, had already been issued as a draft (January 1990) and had been revised and reissued (October 1992). As noted above, the similar document for recycle/reuse is now in early stages of development.

   Completion of this document, which is dependent on resource availability, is important to establishment and maintenance of a schedule for a recycle EPR.

2. Resource availability

   Resources needed for the recycle EPR could approach or exceed those needed for the decommissioning EPR. Because, as noted above, the evaluation of pathways of exposure for recycle/reuse may be more complicated than for decommissioning thus requiring development of detailed information on recycle and reuse applications, resources could exceed those needed for the decommissioning EPR. Resources are estimated at this time to include up to about 5 FTE per year from RES, about 1 - 1.5 FTE per year from NMSS, about 0.5 - 1 FTE per year from OGC, and about 0.25 FTE each per year from NRR and SP. During the decommissioning EPR, a "Core Group" and a "Management Steering Group" composed of members from RES, NMSS, OGC, SP, and NRR was used effectively to coordinate office views and to achieve consensus and concurrence on major documents. The staff would propose to use a similar process for the recycle/reuse rulemaking.

   Most of the same staff needed for the recycle EPR (including development of the technical underpinnings) are currently working full time on the rule, GEIS, regulatory analysis, regulatory guide, and technical underpinnings of the decommissioning EPR. Although gradually decreasing,

resources necessary for these decommissioning activities will be expected to continue, in varying levels of effort, over the next two years. A critical aspect to initiating the recycle EPR on schedule will be having sufficient RES staff available to prepare technical underpinnings as well as sufficient OGC, NMSS, NRR, and SP cognizant staff available for timely review given the overlapping schedules for the decommissioning EPR and development of the recycle underpinnings.

Other rulemakings may also be candidates for an EPR process. In general, a rulemaking would be a candidate for the EPR process if it involves a large number of interested parties, has a high visibility in terms of potential policy direction, or is related to areas that have engendered widespread interest in past actions. For example, issues related to waste disposal, such as any contemplated actions related to sewer disposal or a response to the petition on biomedical waste, could be candidates for an EPR process. The staff believes that there would be some overlap in the personnel needed to conduct this rulemaking, although not the high level of overlap expected between the decommissioning criteria rule and the recycle/reuse rulemaking. The resource implications for future EPR activities will be addressed as the staff prepares recommendations for each candidate action.

Initiation of the recycle EPR is predicated upon the successful completion of the technical underpinnings work under current contracts, completion of the decommissioning EPR in July 1995, procurement of facilitation support for the workshops, and publication of a proposed rulemaking by the EPA on one aspect of recycle. The completion of the EPA rulemaking, however, is not seen as critical to the initiation of the NRC rulemaking workshops.

Based on the current status of the decommissioning EPR and the technical underpinnings for a recycle EPR, the staff could anticipate initiating a recycle EPR in the Fall of 1995. This would coincide with the expected completion of the decommissioning EPR and would allow inclusion of results from Task 2 of the recycle contract. It is planned that the first step in the initiation of the recycle EPR would be preparation of an issues paper similar to that prepared for the decommissioning EPR. The staff would anticipate the first milestone to be preparation of the workshop issues paper and detailed plan for conducting the workshops, which would be submitted to the Commission for approval late in the Fall of 1995.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

RECOMMENDATION:

That the Commission:

1. Note:

   a. The staff plans to proceed with the implementation of this plan unless otherwise directed by the Commission.

   b. The resources necessary to implement known activities of this plan have been included in the FY 1995 - FY 1999 Internal Program/Budget Review document.

James M. Taylor
Executive Director
for Operations

Enclosures:
1. SRM dated March 10, 1994
2. Safety Series 89
3. Procurement Options for Facilitation Support

ENCLOSURE 1

SRM DATED MARCH 10, 1994

March 10, 1994

MEMORANDUM TO: Commissioner Remick

FROM: Samuel J. Chilk, Secretary /s/

SUBJECT: COMFR-94-001 - ENHANCED PARTICIPATORY RULEMAKING FOR RECYCLE/REUSE CRITERIA

This memorandum is to inform you that all Commissioners have concurred in your proposal to initiate an enhanced participatory rulemaking process to establish criteria for the reuse, or recycling, of slightly contaminated equipment and materials. The attached SRM provides staff direction on this issue.

This completes action on COMFR-94-001.

Attachment:
As stated

cc: The Chairman
Commissioner Rogers
Commissioner de Planque
EDO
OGC

March 10, 1994

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary /s/

SUBJECT: COMFR-94-001 - ENHANCED PARTICIPATORY RULEMAKING FOR RECYCLE/REUSE CRITERIA

The Commission (with all Commissioners agreeing) has agreed that the staff should initiate a second enhanced participatory rulemaking process to establish criteria for the reuse, or recycling, of slightly contaminated equipment and materials.

Among the many issues that should be addressed in this rulemaking are: (1) whether slightly contaminated materials resulting from decommissioning activities might be used for certain useful commercial or industrial purposes (e.g., industrial uses such as in reinforcing rods, highway bridge structural steel, industrial equipment, concrete aggregate for roadway construction, etc.); (2) whether slightly contaminated material should be excluded from some commercial or industrial uses; and (3) what criteria (including level of residual contamination) should be utilized in determining which materials might be used for or excluded from such purposes. The process should also include issues raised by steel manufacturers in the accidental smelting of gauges which contain radioactive materials.

After preparation for publication in the Federal Register of the proposed rule for the first enhanced participatory process (decontamination and decommissioning), the staff should develop a schedule and plan which would be necessary to implement an enhanced participatory rulemaking process for reuse/recycle criteria, and forward the plan to the Commission for review and approval. The plan should consider resources and coordination with EPA's planned rulemaking on recycling.

(EDO) (SECY Suspense: 5/31/94)

cc: The Chairman
Commissioner Rogers

Commissioner Remick
Commissioner de Planque
OGC
OCA
OIG

ENCLOSURE 2

SAFETY SERIES 89

ENCLOSURE 3

PROCUREMENT OPTIONS FOR FACILITATION SUPPORT

PROCUREMENT OPTIONS FOR FACILITATION SUPPORT

Use of a facilitator similar to that used during the decommissioning EPR could ensure participation that is fair, balanced and representative of stakeholder interests and provides neutrality in the conduct of the discussion on the recycle EPR. The rulemaking workshops conducted by the staff in support of the radiological criteria for decommissioning were assisted and facilitated by the Keystone Center under an interagency agreement contract arrangement through the Environmental Protection Agency. The support of the facilitators was important, not only in terms of the initial contacts with participants to develop concerns and issues and provide information on the process, but also in conducting the workshop in such a way that the NRC staff could participate as an equal party without the added burden of controlling the workshop discussion.

The staff believes that independent third party facilitation services will continue to be important to the success of future enhanced participatory rulemakings, such as the rulemaking on the recycle of materials, as well as for other types of public workshops on specific issues or sites.

It is critical that the Commission have in place the means to obtain effective outside facilitation support through a timely procurement process under the direct control of the NRC. For larger facilitation efforts, such as those involved in the enhanced participatory rulemaking, the staff in the past has been effectively limited to obtaining facilitation support through the competitive bid process or through an interagency agreement which provides access to a facilitator already under contract with another agency. The competitive bid process consumes a great deal of time (often between one and two years) and could substantially delay the initiation of an enhanced participatory rulemaking. Use of an interagency agreement, such as that used in the enhanced participatory rulemaking on site cleanup standards, has the disadvantage of having the development and implementation of the contract basically in the control of an outside agency, with its own procurement requirements, culture, and priorities.

There are several other mechanisms that the Commission could use to ensure the timely procurement of facilitation services. For example, the Commission could implement an umbrella contract for facilitation services (commonly known as "requirements contracts" or "indefinite quantities contracts"). This type of contract would establish a list of facilitation providers who could be used whenever the Commission needed facilitation support, whether for rulemakings, workshops, or public meetings. Although the

initial contract would need to be implemented through a competitive bid process, once the contract was in place, the services of facilitators for individual projects could be obtained quickly (within six to eight weeks). In addition, there are legislative proposals pending that would raise the dollar amount for "small purchase" procurements, which can be implemented through an greatly abbreviated competitive bid process, from $25,000 to $100,000. Should the legislation become law, this small purchase order mechanism would increase the Commission's ability to obtain facilitation services, even for ambitious projects such as an enhanced participatory rulemaking, through an expedited procurement process. Other possibilities are using a facilitator supplied by another Federal agency or using the "8a" small and disadvantaged business process. The Administrative Conference of the United States (ACUS) is exploring several methods for expediting the procurement process for the services of facilitators and other "neutrals" including the feasibility of promulgating regulations under the authority of the Negotiated Rulemaking Act of 1992 to allow agencies to obtain facilitation services on an expedited basis. The NRC Special Counsel for Public Liaison, is chairing the ACUS subcommittee that is exploring mechanisms to expedite the procurement of facilitation and other alternative dispute resolution services. The Special Counsel will coordinate the development of recommendations to the Commission on various options for the Commission's review and approval on establishing an expedited procurement process for facilitation services. A Commission Paper on these recommendations will be submitted in late Fall 1994. This paper will include a discussion of the ACUS study, as well as provide an evaluation of the advantages and disadvantages of various procurement options, associated resource requirements, and an implementation plan for each option in order to ensure that the procurement mechanism selected by the Commission can be implemented in time to support the recycle rulemaking.

September 2, 1994

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: John C. Hoyle, Acting Secretary /s/

SUBJECT: SECY-94-221 - STAFF ACTION PLAN FOR AN ENHANCED PARTICIPATORY RULEMAKING FOR RECYCLE/REUSE CRITERIA

This is to advise you that the Commission has not objected to implementation of the plan for an enhanced participatory rulemaking for recycle/reuse criteria.

cc: The Chairman
Commissioner Rogers
Commissioner de Planque
OGC
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)