

September 13, 1996

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 **EXIT**) 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 **EXIT**) 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.

## 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 (57 FR 54127). 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 radionuclides. 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 staffs 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

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