



**NATIONAL  
READY MIXED  
CONCRETE  
ASSOCIATION**

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USNRC

Secretary of the Commission, Annette L. Vietti-Cook  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

June 24, 2003 (3:18PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dear Ms. Vietti-Cook;

The National Ready Mixed Concrete Association (NRMCA) opposes the release of materials from NRC regulated facilities for use in ready mixed concrete and other like products. (Federal Register/Vol. 68, No. 40/February 28, 2003/Proposed Rules for 10 CFR Part 20) NRMCA submits these comments concerning the Nuclear Regulatory Commission's (NRC) intent to initiate a rulemaking on the control of solid radioactive materials and to set specific requirements for the release of these materials from NRC regulated facilities. In a previous forum convened to address this topic in 1999, NRMCA articulated its position that it does not want these materials placed back into commerce because of negative perception by our end use customers and other intermediaries. NRMCA believes that it must take this position regardless if the material was never exposed to radiation and even if testing demonstrates there is no activity level above background.

NRMCA believes that material from NRC facilities, even those that were never exposed to any radiological sources or contamination, will be cause for concern to our customers. We are aware that radiation is an emotive issue, often viewed as something always harmful, regardless of scientific evidence to the contrary. In the two-day roundtable discussion held on May 21 and 22, 2003 at NRC headquarters in Rockville, MD, many comments made were in opposition to this rulemaking. All of the recycling and trade groups at the table aligned with NRMCA's position that the materials of concern should not be recycled for use into general commerce. NRMCA is concerned that individuals will not wish to live or work in a building containing recycled material recovered from a nuclear facility even if it is certified to have activity level below a level of concern. NRMCA believes that the viability of our industry could be jeopardized if materials from NRC facilities were introduced into the supply chain.

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To illustrate how this issue may effect public perception, the Portland Cement Association documented an adverse market event created by cement produced by burning hazardous waste.

*Some cement companies manufacture cement by burning hazardous wastes as fuels to recover the energy from these wastes. The cement produced from these plants is indistinguishable in chemical analysis from cements manufactured using virgin fuels. However, due to the public concern over "hazardous waste cement" a large home improvement chain established purchasing policies that prohibited the purchase of these cements. The loss of the home improvement chain account obviously caused economic damage to the cement company that recycles the hazardous waste.<sup>1</sup>*

NRMCA wishes to fully disclose any and all information regarding materials from NRC regulated facilities to our customers. There is significant concern that a failure to be totally candid with the recipient of the material regarding its history, activity level, decay or half-life, and other potential hazards may cause economic harm to the ready mixed concrete industry. We believe that a failure to be candid and forthcoming with all information will cause great fiscal harm to the entire industry.

Another issue of great importance is worker safety matters related to radiological issues. While materials from NRC regulated facilities may be deemed safe and cleared for use in all applications, workers and the unions that represent some workers may take great exception to such a claim. This matter parallels the perception that is an issue with the general public and mistrust for government. The materials may be an issue of labor negotiations when workers are likely to request portal monitoring, personal dosimetry and medical monitoring. It is also likely that most occurrences of cancer experienced in the workforce will make the ready mixed concrete producers culpable and subject to significant liabilities.

The ready mixed concrete industry competes with other construction materials manufacturers for market share in the U.S. economy. An evolving and widely accepted standard for building construction is the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System. LEED is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. Two areas of primary focus in the standard are energy conservation and indoor environmental quality. If materials from NRC regulated facilities are released into general commerce, the writers of this standard may choose to exclude this substance from any LEED projects.

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<sup>1</sup> Comments on the Meeting Summary for the NRC Workshop on Control of Solid Materials Held December 7-8, 1999. Charles Wilk, Portland Cement Association

While LEED is a standard, many jurisdictions are adopting the guideline as a requirement to meet local building codes. Architects will be designing buildings that will provide a healthy environment for those who live and work within that structure. The acceptance of LEED is growing throughout the United States and a failure to accept the challenges of this standard could result in a severe economic downturn for the ready mixed concrete industry.

NRMCA is also concerned about the economic implications if the NRC determines that solid radioactive materials are suitable for use in commerce. The primary concern for NRMCA in this instance is the matter of product liability and the potential damage that may be occur if this rulemaking moves forward. Unless the federal government is willing to indemnify the ready mixed concrete industry, then it does not appear prudent to consider this matter further. It is also not clear if there will be burdensome requirements placed upon the industry and other users if this material is placed into general commerce.

If this rule is implemented, NRMCA is concerned about the intentions of the NRC regarding education of the American public regarding the placement of materials from NRC regulated facilities. It would be an extreme and exceptionally costly endeavor for the ready mixed concrete industry to have the responsibility to inform and educate the public about the use of this material. The cost of this effort would likely overwhelm the resources of the industry and may result in a failure to provide ready mixed concrete to the market. The business requires an ability to maintain the public's trust and that trust may be compromised if the populace is not given a choice in the materials they select. In the process of educating the general public, the ready mixed concrete industry stands to lose significant profitability.

NRMCA must also be particularly mindful of matters regarding children, the elderly and people with compromised immune systems. Standard risk assessments used by government agencies generally do not consider compromised individuals who may be more susceptible to harm from lower levels of radiation. These individuals and those caring for them will need reassurance to prove to them that they are free from harm. In these particular cases, it is likely that the public will look for a risk free environment, which is not possible to provide.

In light of all of these circumstances presented, NRMCA wishes to pose the following questions to the Commission and ask for resolution should they find the need to move ahead with the rulemaking:

- Will the material require tracking similar to that required by the Resource Conservation and Recovery Act once placed into commerce?
- Will the NRC make a conscientious effort to identify the economic impact to the ready mixed concrete industry?
- Will material from NRC licensed facilities require segregation from other new or recycled materials?
- Will delivery of products containing delivery vehicles dedicated to that type of material?

- Will there be any monitoring requirements required to survey delivery and process equipment?
- Will portal monitoring be required to accept materials from NRC licensed facilities and is the ready mixed concrete producer responsible for the purchase, installation and maintenance of the screening equipment?
- Will there be any worker/labor requirements for special protective equipment and medical monitoring?
- Who will be responsible for informing the public and proving assurance that they will not be harmed by the introduction of these materials into general commerce?

In closing, the regulatory and economic effects of this proposed rule if implemented would be devastating to the ready mixed concrete industry. NRMCA strongly opposes its implementation and encourages the NRC to put this issue to rest and discontinue consideration of the use of solid materials from NRC regulated facilities. The material is not acceptable for use in general commerce and also in other applications in uninhabited areas. The general public will not find the use of this type of recycled material acceptable and they will likely seek other materials for use to the detriment of the ready mixed concrete industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Herbert III', with a stylized flourish at the end.

Edward R. Herbert III, Director  
Environmental Affairs  
National Ready Mixed Concrete Association