

**Part 40
(68FR51516)**

October 28, 2003

DOCKETED
USNRC

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff

November 5, 2003 (11:08AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: Supplement to: September 8, 2003, 10 C.F.R. Section 2.808 Motion or, at the
Commission's Discretion, 10 C.F.R. Section 2.802 Petition, Responding to
68 Fed. Reg. 51516-51518 (August 27, 2003)

Dear Secretary:

This letter is to provide the Secretary and the Commission with additional
information pertinent to my submittal of September 8, 2003, which was supplemented on
September 24, 2003.

SECY-03-025

The Nuclear Regulatory Commission (NRC) recently released SECY-03-025,
dated February 18, 2003, in response to my Freedom of Information Act Request.
SECY-03-025 is entitled Utah Alternative Groundwater Protections Standards; Process
for Implementation of the Alternative Standards Provision in Section 274o¹ of the Atomic
Energy Act of 1954, as Amended.

SECY-03-025, page 3, discusses the Notice and Hearing Provisions to be used to
Conduct the Proceeding Specified in Section 274o. The SECY states:

Because neither the language of the amendment nor the legislative
history of the amendment address the type of hearing that should be
afforded, and because the term "hearing" can encompass a spectrum of
proceedings, the staff has considered three options for meeting the notice
and hearing provisions in Section 274o:

SECY-03-025 gives no indication as to what specific "legislative history" the
NRC staff went to when considering whether the legislative history of the Alternative
Standards Provision in Section 274o addressed the type of hearing that should be
afforded under its provisions.

¹ NRC Authorization, Public Law 97-415, Section 19(a), January 4, 1983.

Template=SECY-067

SECY-02

SECY-03 does not specifically discuss statements made in any legislative history with respect to the Alternate Standards Provision and does not discuss why the legislative history gives no clue as to the intent of Congress.

SECY-03-025 does not discuss why the "legislative history" falls short of providing guidance with respect to the type of public hearing that should be afforded under the Alternate Standards Provision of Section 274o and, thus, required additional NRC interpretation.

SECY-03-025 does not discuss why Congress was not referring to a hearing under the public hearing procedures already set forth in the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2239; Hearings and judicial review), when Congress stated that there should be an "opportunity for public hearing."

Legislative History of the Amendment

I wish to bring to the attention to the Commission statements in the Legislative History of the Alternate Standards Provision of Section 274o (42 U.S.C. Section 2021(o)) that clearly addresses the "type of hearing that should be afforded."

The Alternate Standards Provision of Section 274o was adopted on January 4, 1983, as part of Public Law 97-415. The Legislative History of Public Law 97-415² includes House Conference Report No. 97-884, which specifically discusses the Alternate Standards Provision of Section 274o (under "Sections 18, 19, 20, 21—Uranium Mill Tailings," pages 43-47). Attachment 1 hereto.

The House Conference Report states, in pertinent part:

Fourth, the Senate provision clarified the authority of Agreement States that elect to regulate uranium milling activities to adopt alternatives to Federal requirements if the States find that the Federal requirements are not practicable under local conditions. The provision specified that NRC may not reject any such State findings that are supported by substantial evidence in the record, unless the NRC finds that the State alternative fails to provide adequate protection to the public health, safety, and the environment. Such NRC action may only be taken in accordance with the notice and hearing provisions of the Atomic Energy Act. [Emphasis added.]

The House bill did not contain any provisions related to uranium mill tailings.

The fourth major element of the conference agreement involves implementation of the federal standards and regulations of EPA and NRC

² United States Code: Congressional and Administrative News: 97th Congress—Second Session, 1982, Volume 4, Legislative History (Public Laws 97-365 to 97-473).

at the State level. Under section 19 of the conference agreement, individual Agreement States are authorized to adopt alternatives (including site-specific alternatives) to the Commission's regulations. These alternative State requirements, which may take into account local or regional conditions, must be submitted to the Commission for approval. If, after notice and opportunity for a public hearing, the Commission determines that the State alternatives will achieve a level of stabilization and containment of the site and a level of protection for public health, safety, and the environment, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the EPA and NRC standards and requirements, the State is to be allowed to implement such alternatives.

The "notice and hearing provisions of the Atomic Energy Act," referred to in House Conference Report No. 97-884, are found at 42 U.S.C. Chapter 23, Section 2239 (Hearings and judicial review). This Section also applies to proceedings for the issuance or modification of rules and regulations.

Section 2239(a)(1)(A) states, in part:

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Unless the Commission chooses to disavow the statements made in the House Conference Report, I do not see how there can be any doubt that it was the intent of Congress that the notice and opportunity for hearing provisions that Congress was referring to in Public Law 97-415, were the "notice and hearing provisions of the Atomic Energy Act," i.e., Section 2239.

Language of the Amendment

In another part of Section 274o (42 U.S.C. Section 2021(o)(3)), Congress set forth a requirement that Agreement States establish license procedures that include "an opportunity, after public notice, for written comments and a public hearing, with a transcript." Section 274o(3) states:

(o) State compliance requirements: compliance with section 2113(b) of this title and health and environmental protection standards; procedures for licenses, rulemaking, and license impact analysis; amendment of agreements for transfer of State collected funds; proceedings duplication restriction; alternative requirements

In the licensing and regulation of byproduct material, as defined in section 2014(e)(2) of this title, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection (b) of this section, a State shall require-

(3) procedures which--

(A) in the case of licenses, provide procedures under State law which include-

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript, [Emphasis added.]

Here, Congress clearly differentiated between an opportunity "for written comments" and an opportunity for "a public hearing." There is no indication that Congress considered them to be one and the same or that Congress considered an opportunity "for written comments" to be a subset of an opportunity for "a public hearing."

Conclusion

In sum, there is clear evidence that, contrary to the representation in SECY-03-025, both the language of the amendment and the legislative history of the amendment address the type of hearing that should be afforded under the Alternative Standards Provision in Section 274o.

There is clear evidence that the notice and public hearing contemplated by the Alternate Standards Provision in Section 274o should be conducted pursuant to the "notice and hearing provisions of the Atomic Energy Act," at 42 U.S.C. Section 2239.

There is no evidence that Congress gave the NRC broad discretion to determine what type of public hearing should be afforded under Section 274o.

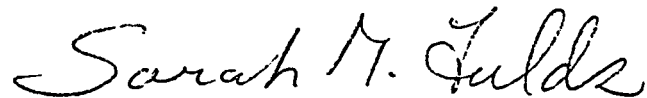
There is no evidence that Congress intended that the Commission use a notice and opportunity for public comment in order to fulfill the "notice and opportunity for public hearing" statutory requirement. This is not to say that the Commission, at its discretion, could not also provide an opportunity for written and oral public comment. However, that opportunity for public comment does not take the place of an opportunity for public hearing. When an opportunity for public hearing is required by statute, there are numerous instances where the Commission has noticed both an opportunity to comment and an opportunity for public hearing under 10 C.F.R. Part 2 procedures (e.g., notices of 10 C.F.R. Part 40 license amendment requests). However, when an opportunity for public hearing is required by statute, there is no indication that Congress intended that an

opportunity for written public comment, in and of itself, would be sufficient to fulfill that statutory public hearing requirement.

There is no evidence that Congress did not require that specific hearing procedures implementing Section 274o be established by way of rule, regulation, or order pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.).

If you have any questions regarding this submittal, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Sarah M. Fields".

Sarah M. Fields
P.O. Box 143
Moab, Utah 84532

Enclosure: As stated

cc: (Electronic mail w/o enclosure)

William D. Travers, EDO NRC

Paul H. Lohaus, OSTP NRC

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William J. Sinclair, UT DEQ

Craig Jones, UT DRC

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Convened January 25, 1982

The House Adjourned December 21, 1982
and the Senate Adjourned
December 23, 1982

Volume 4

LEGISLATIVE HISTORY
[PUBLIC LAWS 97-365 to 97-473]
PROCLAMATIONS
EXECUTIVE ORDERS
TABLES and INDEX

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House Report (Interior and Insular Affairs Committee) No. 97-22(I),
Apr. 10, 1981 [To accompany H.R. 2330]

House Report (Energy and Commerce Committee) No. 97-22(II),
June 9, 1981 [To accompany H.R. 2330]

Senate Report (Environment and Public Works Committee)
No. 97-113, May 15, 1981 [To accompany S. 1207]

House Conference Report No. 97-884, Sept. 28, 1982
[To accompany H.R. 2330]

Cong. Record Vol. 127 (1981)

Cong. Record Vol. 128 (1982)

DATES OF CONSIDERATION AND PASSAGE

House November 5, 1981; December 2, 1982

Senate March 30, October 1, December 16, 1982

The House bill was passed in lieu of the Senate bill after
amending its language to contain much of the text of the
Senate bill. The Senate Report (this page) and the
House Conference Report (page 3603) are set out.

SENATE REPORT NO. 97-113

[page 1]

The Committee on Environment and Public Works, reports an
original bill (S. 1207) to authorize appropriations to the Nuclear
Regulatory Commission in accordance with section 261 of the Atomic
Energy Act of 1954, as amended, and section 305 of the Energy
Reorganization Act of 1974, as amended, and for other purposes
and recommends that the bill do pass.

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DISCUSSION OF INTENT

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INTERIM OPERATING LICENSE (SECTION 201)

SUMMARY

The bill amends section 192 of the Atomic Energy Act of 1954,
as amended, to authorize the NRC to issue interim operating licenses
for nuclear power plants.

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to participate in the licensing process. The Panel's inquiry shall extend, but is not limited, to consideration of (1) alternatives to the current two-step licensing process, (2) alternatives to the current adjudicatory process that will provide adequate public participation, and (3) areas in which the NRC can place greater reliance upon State determinations, such as need for power, alternative energy sources, siting, and environmental reviews.

HOUSE CONFERENCE REPORT NO. 97-884

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2330), to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

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SECTION 11—TEMPORARY OPERATING LICENSES

Both the House bill and the Senate amendment granted the Commission new limited authority to issue temporary (or "interim") operating licenses for nuclear power reactors if certain conditions were fulfilled.

Section 12 of H.R. 2330 gave the Commission authority to issue temporary operating licenses (TOLs) for nuclear generating stations in advance of the conduct and completion of hearings re-

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The Senate amendment made three changes in the existing section 148. First, the Senate provision amended subsection 148 a. (1) to make it clear that the authority of the Secretary of Energy to withhold information under this subsection is limited to certain narrowly-defined categories of information related to atomic energy defense programs. The specific categories of information are set forth in subsection 148 a. (1)(A)-(C). By inserting the phrase "with respect to atomic energy defense programs," the Senate intended to ensure that the authority conferred upon the Department of Energy under section 148 authorized only the withholding of information that (1) falls within one of the three categories specified in subsection 148 a. (1)(A)-(C), and (2) is related to the Department's atomic energy defense programs.

Second, the Senate amendment added a new subsection "e" to section 148, requiring the Secretary to prepare a quarterly report detailing the Secretary's application of section 148 during that period. The information to be contained in this report, which is to be made available upon request of any interested program, was set forth by the Senate in subsection 148 a. (1)-(3).

The conferees agreed to include the Senate provision in the conference agreement, subject to one clarification. Namely, the conferees do not intend that DOE, in preparing the report required under subsection 148e., identify the actual information to be withheld under this provision. These reports should (1) identify the type of information withheld, (2) provide a statement justifying the withholding of the information, and (3) provide assurance that only the minimum amount of information is being withheld.

SECTIONS 18, 19, 20 AND 21—URANIUM MILL TAILINGS

The Senate amendment contained a number of provisions relating to implementation of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The provisions adopted by the Senate, which are included in section 206 of S. 1207, were based upon certain problems identified in hearings held before the Senate Environment and Public Works Committee on June 16, 1981.

First, the Senate provision established new deadlines for the promulgation by the Environmental Protection Agency (EPA) of inactive and active site general environmental standards, in light of the fact that EPA missed the existing statutory deadlines of November 8, 1979 and May 8, 1980 for issuing inactive and active site standards, respectively. The Senate provision provided that EPA shall have until April 1, 1982 to issue final inactive site standards and until October 1, 1982 to issue proposed active site standards, with final active site standards to follow six months thereafter. The Senate provision clarified EPA's authority to consider impacts on public health and safety and the environment, as well as the economic cost of applying the standards. In addition, the Senate provision provided EPA with flexibility under the Solid Waste Disposal Act to consider special circumstances associated with uranium mill tailings.

Second, the Senate provision suspended NRC's regulations, which were issued in advance of EPA's standards, until EPA promulgates its standards. Within 90 days of promulgation by EPA of final

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standards, the Senate provision directed NRC to initiate a rule-making proceeding to conform its regulations to those standards. Pending promulgation by the NRC of its regulations, the NRC was barred from implementing or enforcing any of its current regulations, but was allowed to regulate uranium mill activities on a case-by-case basis as necessary to protect public health and safety.

Third, the Senate provision clarified that NRC has the authority to consider all relevant factors, including impact on public health and safety and the environment, as well as economic cost in developing its standards. For existing uranium mills, the Senate provision authorized the NRC to consider certain site-specific conditions.

Fourth, the Senate provision clarified the authority of Agreement States that elect to regulate uranium milling activities to adopt alternatives to Federal requirements if the States find that the Federal requirements are not practicable under local conditions. The provision specified that NRC may not reject any such State findings that are supported by substantial evidence in the record, unless the NRC finds that the State alternative fails to provide adequate protection to the public health, safety, and the environment. Such NRC action may only be taken in accordance with the notice and hearing provisions of the Atomic Energy Act. Upon promulgation by NRC of its regulatory requirements, Agreement States were given six months, under the Senate provision, to issue such amended State requirements as may be necessary. NRC may terminate a State's authority after this period only by following the notice and hearing requirements of the Atomic Energy Act.

Fifth, the Senate provision clarified that NRC retains authority in Agreement States to evaluate compliance with Agreement State requirements, but not to impose additional requirements.

Finally, the Senate provision authorized NRC to exempt land in which tailings have been employed as backfill in underground mines from the ownership transfer provisions of the Act.

The House bill did not contain any provisions related to uranium mill tailings.

The conferees have agreed to a compromise that includes four essential elements. First, the conference agreement establishes new deadlines for the promulgation by EPA of general environmental standards required under section 275 of the Atomic Energy Act. The original deadlines established when the Uranium Mill Tailings Radiation Control Act (UMTRCA) was passed in 1978 called upon EPA to promulgate final general environmental standards for inactive and active uranium processing sites by November 8, 1979 and May 8, 1980, respectively. Those deadlines have long since passed and EPA has yet to issue either its final active or inactive standards. The conferees wish to emphasize their concern and express their displeasure over EPA's past failures to promulgate these general environmental standards in a timely fashion.

When UMTRCA was passed in 1978, Congress assigned to EPA a significant role in the program for regulation of uranium mill tailings activities. An EPA regulatory role in this area should, in the view of the conferees, be brought to bear on the task of assessing and controlling the risks posed by uranium mill tailings and developing general environmental standards only if a regulatory program including EPA can be implemented with certainty and in

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a timely manner. To date, EPA has failed to meet this Congressional mandate as it was first spelled out in UMTRCA.

Accordingly, the conference agreement establishes new deadlines for the promulgation by EPA of general environmental standards. Specifically, EPA is directed to promulgate the following standards by the dates identified:

Final Inactive Site Standards—October 1, 1982;

Proposed Active Site Standards—October 31, 1982; and

Final Active Site Standards—October 1, 1983.

It is the intent of the conferees that EPA make every effort to allocate those resources necessary to ensure that the foregoing deadlines are met. In this regard, the conferees note the assurances of the Administrator of EPA contained in a letter to the conferees of April 28, 1982, that these deadlines are, in fact, achievable.

Should EPA fail to meet the deadlines set forth for the promulgation of final general environmental standards, the conference agreement includes specific directions on the actions that are to follow. Section 18(a)(1) provides that, if EPA fails to promulgate final inactive site standards by October 1, 1982, all action required of the Secretary of Energy under title I of UMTRCA shall be taken in accordance with EPA's proposed inactive site general environmental standards (published at 46 Federal Register 2556 on January 9, 1981), until such time as EPA promulgates final inactive site standards. EPA should continue in its efforts to promulgate final inactive standards as soon as possible and, upon promulgation, the conferees intend that the Secretary of Energy's actions, as required under title I, be taken in compliance with such final standards. To the extent practicable, DOE should make every reasonable effort, in complying with EPA's proposed standards, to take those actions required under title I which will, upon promulgation of EPA's final standards, be least likely to be disrupted. In addition the conferees note that, for purposes of the "7-year clock" for the completion of cleanup, DOE's time begins to run October 1, 1982.

If EPA fails to promulgate final active site standards by October 1, 1983, section 18(a)(3) of the conference agreement provides that the authority of EPA to promulgate such active site standards terminates. In such event, the NRC is authorized to determine, in its discretion, whether the promulgation of such general environmental standards is necessary in order for NRC to carry out its responsibilities under title II and, if so, to promulgate any such standards deemed necessary. Upon promulgation of any such standards, the NRC shall take such action as it deems necessary to conform its regulations to such standards. It is the conferees' intent, however, that during the period in which the NRC promulgates these active site standards and subsequently conforms its regulations to such standards, nothing in the conference agreement shall be construed as requiring the NRC to prohibit or suspend the implementation or enforcement of its regulations. In light of this, it would be the conferees' expectation that, in promulgating any general environmental standards deemed necessary, the Commission would provide notice and opportunity for public comment similar to that available had EPA been promulgating such standards.

The second major element of the conference agreement relates to the regulations required to be promulgated by NRC under

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UMTRCA and the Atomic Energy Act. On October 3, 1980, the Commission promulgated its final Uranium Mill Tailings Requirements (45 Federal Register 65521 to 65538). Under the conference agreement, the Commission is prohibited from implementing or enforcing those regulations until January 1, 1983. Due to the confusion which has arisen with EPA's failure to promulgate final regulations in advance of the NRC, according to the timetable established in the UMTRCA, the conferees believed the simplest and most efficient manner in which to restore order to the regulatory scheme, was temporarily to suspend implementation and enforcement of the NRC's mill tailings regulations until January 1, 1983. The conferees have limited the suspension to the minimum time required to straighten-out potentially conflicting regulatory requirements. The conferees take this action only to assure a smooth regulatory system while transitions are occurring. On that date, the Commission is authorized to implement and enforce all of its October 3rd Uranium Mill Licensing Requirements except those that the Commission determines would require a major action or commitment by licensees which would be unnecessary if (1) the active site standards proposed by EPA are promulgated in final form without modification, and (2) the Commission's requirements are modified to conform to such standards. The conferees note that, in this context, the term "commitment" may include financial obligations or expenditures that might be required. This determination referred to in section 18(a)(4) of the conference agreement is to be made by the Commission following a review and analysis of the Commission's regulations and EPA's proposed active site standards as soon as the latter are promulgated. Section 18(a)(4) specifically provides that, following proposal by EPA of its active site standards, the Commission is to undertake a review of its regulations in order to make the determination referred to above. The conference agreement provides the NRC 90 days in which to make this determination. This period of time, in the view of the conferees, should provide sufficient opportunity for the Commission to provide notice and opportunity for public comment prior to reaching its determination.

Those requirements that the Commission determines would require a major action or commitment by licensees which would be unnecessary if (1) the standards proposed by the Administrator are promulgated in final form without modification, and (2) the Commission's requirements are modified to conform to such standards, shall continue to be suspended (both implementation and enforcement) until the earlier of April 1, 1984, or the date on which the Commission amends its regulations to conform to EPA's final active site standards (to be promulgated by October 1, 1983). Upon promulgation by EPA of its final active site standards, the Commission shall have until April 1, 1984 to conform its regulations to EPA's standards. If NRC completes this task prior to April 1, 1984, the suspension of such regulations shall terminate upon this earlier date. If EPA does not promulgate final standards by October 1, 1983, the agency's regulatory authority terminates and NRC's regulations go into effect on that date as initially proposed or as modified by rule by NRC. Once again, the conferees fully expect that this six month period of time is of sufficient length to enable the

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Commission to provide notice and opportunity for public comment prior to reaching its determination.

During the period of suspension of NRC's Uranium Mill Licensing Requirements imposed under the conference agreement, the NRC is authorized to take such action as it may deem necessary, on a licensee-by-licensee basis, to protect public health, safety, and the environment.

Subsection (f)(4) clarifies that nothing in this section is intended to affect the authority or responsibility of the Commission to promulgate regulations to protect the public health and safety and the environment. The conferees specifically rejected the notion that the NRC in any way acted improperly, in promulgating its regulations in advance of action by the Environmental Protection Agency. This subsection is not intended to affect the temporary suspension imposed under 18(a)(4) of the implementation and enforcement of certain of NRC's Uranium Mill Licensing Requirements.

The third major element of the conference agreement pertains to the responsibilities of EPA and NRC to promulgate, respectively, general environmental standards and uranium mill licensing regulations. In each instance, the conferees have agreed to include specific references in the appropriate sections of the Atomic Energy Act directing EPA and NRC, in promulgating such standards or regulations, to consider the risk to the public health, safety, and the environment, the environmental and economic costs of such standards of regulations, and such other factors as EPA or NRC, respectively, determine to be appropriate.

The conferees do not intend and specifically oppose by this language affecting any pending litigation or appeal of judicial decisions based on the fundamental missions or responsibilities of the agencies. The conferees note that this language reflects accurately the current regulatory approach of the agencies. The language agreed to by the conferees should not result in any delays in establishment of remedial action standards. EPA, for example, has already advised the conferees that it is considering costs in formulating its inactive site requirements. In addition, the NRC has testified before Congress that it, too, took costs into account in promulgating its Uranium Mill Licensing Requirements. Moreover, in adopting the language, the conferees intend neither to divert EPA and NRC from their principal focus on protecting the public health and safety nor to require that the agencies engage in cost-benefit analysis or optimization.

The conferees are of the view that the economic and environmental costs associated with standards and requirements established by the agencies should bear a reasonable relationship to the benefits expected to be derived. This recognition is consistent with the accepted approach to establishing radiation protection standards, and reflects the view of the conferees that, in promulgating such general environmental standards and regulations, EPA and NRC should exercise their best independent technical judgment in making such a determination. At all times, the conferees fully intend that EPA and NRC recognize as their paramount responsibility protection of the public health and safety and the environment.

The fourth major element of the conference agreement involves implementation of the federal standards and regulations of EPA

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and NRC at the State level. Under section 19 of the conference agreement, individual Agreement States are authorized to adopt alternatives (including site-specific alternatives) to the Commission's regulations. These alternative State requirements, which may take into account local or regional conditions, must be submitted to the Commission for approval. If, after notice and opportunity for a public hearing, the Commission determines that the State alternatives will achieve a level of stabilization and containment of the site and a level of protection for public health, safety, and the environment, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the EPA and NRC standards and requirements, the State is to be allowed to implement such alternatives.

Section 20 of the conference agreement confers upon individual licensees a related but less independent ability to propose alternatives. Under this section, individual licensees are authorized to propose alternatives to specific Commission requirements. The Commission may treat such alternatives as satisfying Commission requirements if it determines that such alternatives will achieve a level of protection for public health, safety, and the environment, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the EPA and NRC standards and requirements.

--States and licensees are intended to be provided an opportunity to propose approaches to mill tailings containment and stabilization suited to regional or site-specific conditions which may vary from engineering or technical specifications recommended by the Commission. The Commission is expected to assure that alternative approaches meet the operational criteria and objectives set by the NRC regulations and the general environmental standards set by EPA. The conferees note that the right of Agreement State regulatory authorities to adopt regulations which meet the NRC/EPA standard is being clarified, but that a distinction exists between this right and the opportunity being affirmed for licensees to propose to NRC alternative approaches to compliance with Commission regulations.

Finally, section 19(b) of the conference agreement provides that there is to be no termination of the regulatory program of any Agreement State that is acting to exercise authority over mill tailings unless NRC complies with the procedures specified in subsection 274(j) of the Atomic Energy Act.

S. 1207, as passed by the Senate, included several provisions not included in the conference agreement. In some instances, the conferees were of the view that the authority conferred pursuant to these specific provisions in S. 1207 already existed under current law or that the Commission was interpreting its authority in a fashion consistent with the conferees' understanding of what current law provides, and that no further statutory guidance was required. Accordingly, the conferees agreed to delete those provisions. Specifically, those provisions of S. 1207 which were so deleted are as follows: Sections 206 (i), (j), and (k).