

June 25, 1979

SECY-79-413

COMMISSIONER ACTION

The Commissioners


For:

From:

William J. Dircks, Director
Office of Nuclear Material Safety and Safeguards

Robert B. Minogue, Director
Office of Standards Development

Thru:

Lee V. Gossick
Executive Director for Operations 

Subject:

LICENSING REQUIREMENTS FOR URANIUM MILLS

Purpose:

To consider publication for public comment of proposed rule changes to 10 CFR 40 and 170 to establish specific licensing requirements and fees for uranium mills and mill tailings, amendments to 10 CFR 30 and 70 for consistency to require the completion of a final environmental impact assessment prior to commencement of construction of certain types of other major plants, and amendments to 10 CFR 150 required by the Uranium Mill Tailings Radiation Control Act.

Category:

This is a policy matter requiring Commission approval.

Issue:

How should the Commission amend its regulations to implement the Uranium Mill Tailings Radiation Control Act (Enclosure "F") and the conclusions reached in the uranium mill GEIS? Also, should the Commission amend Parts 30 and 70 to require the completion of a final environmental impact assessment prior to authorizing the commencement of construction of other types of major plants?

Discussion:

The proposed rule change to Part 40 discussed herein would essentially establish national standards for the control of mill tailings. It would incorporate into the Commission's regulations in a new appendix to Part 40 the conclusions derived from the recently issued draft generic environmental impact statement (GEIS) on uranium milling and include the requirements set forth in the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). OELD notes in this regard that some of the criteria set forth in these proposed regulations provide guidelines for the exercise of Commission discretion rather than hard and fast Commission determinations, so that the scope of issues open to litigation remains broad. It is also important to note in this regard, however, that the NMSS staff has been utilizing tailings management performance objectives on an interim basis over the past several years which are less specific than the proposed regulation. The fact that these interim criteria have been cast as broad performance objectives has not caused licensing problems. Instead the staff has found it necessary in the real world of licensing uranium mills to utilize broad performance objectives for certain aspects of its guidance because of the highly site specific nature

915108

7909060059

of the tailings disposal problem. For consistency in the regulations, the proposed rule changes to Parts 30 and 70 would require a final environmental impact statement or assessment to be issued by the NRC prior to authorizing the commencement of construction of other types of major plants (i.e., those plants that must be evaluated under the NEPA process).

As was indicated in the Commission meeting of May 9, 1979 concerning SECY-79-88, "Timing of Certain Requirements of the Uranium Mill Tailings Radiation Control Act of 1978," these proposed changes to Part 40 embody what OELD believes to be the better interpretation concerning ownership of mill sites and tailings of portions of section 83 of the Atomic Energy Act of 1954, as added by the Mill Tailings Act. Although OELD believes this to be the better view, arguments to the contrary could be made. A detailed legal analysis of these issues appears in Enclosure "G".

The requirements and objectives for mill tailings contained in these proposed regulations focus on presently operating and future milling activities, as does the GEIS and, to a large extent, the regulatory program in title II of the Mill Tailings Act. Accordingly, the proposed criteria do not apply to the remedial action program in title I of the Act, which is subject to NRC consultation and approval on a case-by-case basis.

The proposed changes reflect certain issues regarding the Agreement State program that require amendments to 10 CFR 150 implementing certain requirements of the UMTRCA. These changes to 10 CFR 150 conform to the Commission's determination regarding concurrent jurisdiction over byproduct material for the three year interim. Further, the changes reflect what OELD believes to be the better legal views concerning Commission and Agreement State responsibilities under Section 83 of the Atomic Energy Act of 1954 as added by UMTRCA. An analysis of this issue also appears in Enclosure "G".

Enclosure "A" is a draft FEDERAL REGISTER Notice of the proposed rule change. It contains a detailed discussion of the various requirements to be incorporated in 10 CFR 40 as derived from the draft GEIS and UMTRCA and a detailed discussion of the proposed changes to Parts 30, 40, 70, 150, and 170.

Enclosure "B" contains a detailed discussion of the various alternatives considered in developing the draft amendment 10 CFR 40.

The proposed rule changes resulting from the GEIS have not been sent to the Agreement States for comments prior to Commission review. However, a draft GEIS (setting forth essentially the same technical, financial, ownership, and long-term surveillance criteria contained in the proposed rule change) was sent to applicable Agreement States for review and comments in November 1978. Staff met with representatives of these States on December 13 and 14, 1978, to obtain their

915109

views and comments. The major concerns and comments of the States are contained in Enclosure "C". Staff does not believe that State views on the proposed rule change to Part 40 would be significantly different than those already obtained on the draft GEIS. The Agreement States have not, however, seen the amendments to 10 CFR Part 150 concerning the Agreement State program. The Agreement States also have not had an opportunity to review and comment on the legal interpretation of section 83 found in Enclosure "G". Accordingly, the amendments to Part 150 may generate considerable interest.

The estimated costs of this proposed regulatory action are summarized in Enclosure "H". Detailed cost estimates are contained in the GEIS. The value/impact analysis for amendments made to conform with the legal requirements of the UMTRCA are as outlined in SECY-79-88.

Recommendations:

That the Commission:

1. Approve publication in the FEDERAL REGISTER of a notice of proposed rulemaking to amend 10 CFR 30, 40, 70, 150, and 170 as discussed above.
2. Note that the notice will be published in the FEDERAL REGISTER allowing 60 days for public comments. During this period, public meetings will be held on the GEIS and proposed rule to Part 40 to aid the public in commenting on them.
3. Note that a recommended final proposed rule to Part 40 will be sent to the Commission at the time the final GEIS on uranium milling is completed.
4. Note that the Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee, the Subcommittee on Nuclear Regulation of the Senate Committee on the Environment and Public Works, the Subcommittee on Energy, Nuclear Proliferation and Federal Services of the Senate Committee on Governmental Affairs, the Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee, and the Subcommittee on Environment, Energy, and the Natural Resources of the House Committee on Government Operations will be informed of the Commission's action by a letter such as Enclosure "D".
5. Note that a public announcement such as Enclosure "E" will be issued when the proposed rule change is filed with the Office of the Federal Register.

Coordination:

The Offices of Standards Development and Nuclear Material Safety and Safeguards concur in the recommendations of this paper. The Office of the Executive Legal Director prepared Enclosure "G", concurs in the technical amendments to conform to UMTRCA, and has no legal objections to the criteria derived from the mill GEIS. The position of the Office of State Programs is that an EIS is necessary for promulgation of the general license pursuant to 10 CFR 51.5(b)(6). OPE and OGC concur in the recommendations of this paper, but qualify that

910 337
315110

concurrence with respect to the basis for taking into account long term effects. OPE comments, in which OGC concurs, appear in Enclosure I. NMSS disagrees with the views of OPE and OGC regarding the matter of long term effects from mill tailings disposal. The draft GEIS contains a comprehensive evaluation of potential long term effects. One of the major factors used in evaluating relative merits of various tailings disposal modes in the GEIS was the degree to which each mode provides long term stability and isolation of the tailings. NMSS considers there is a reasonable and adequate basis for the regulations being proposed and that they are in fact based upon careful consideration of long term effects. The draft public announcement was prepared by the Office of Public Affairs.



William J. Dircks, Director
Office of Nuclear Material Safety
and Safeguards



Robert B. Minogue, Director
Office of Standards Development

Enclosures:

- "A" - Proposed Rule Change to 10 CFR 30, 40, 70, 150, and 170
- "B" - Potential Rule Change Alternatives
- "C" - Agreement State Views
- "D" - Draft Congressional Letter
- "E" - Draft Public Announcement
- "F" - Uranium Mill Tailings Radiation Control Act
- "G" - Interpretation of Section 83 of the Atomic Energy Act, as added by Section 202 of the Uranium Mill Tailings Radiation Control Act of 1978
- "H" - Estimated Costs in Manpower and Dollars to NRC and Licensees to Implement Requirements of this Proposed Regulation
- "I" - OPE Views on Draft Uranium Mill GEIS

9154111

910 3330

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, July 9, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT July 2, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION

Commissioners
Commission Staff Offices
Exec Dir for Operations
ACRS
Secretariat

915112

~~40-330~~