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CANON

JUL 17 1984

- 1 -

Mr. Joseph Cannon
 Assistant Administrator for
 Air and Radiation
 U.S. Environmental Protection Agency
 Room W937
 401 M Street, S.W.
 Washington, D.C. 20460

Dear Mr. Cannon:

I appreciate the time and effort you and your staff have been devoting
 to resolving the issues of concern to EPA and the Nuclear Regulatory Commission
 in the regulation of radioactive waste disposal. For your records on these
 interactions, I am enclosing minutes of the April 13, 1984 meeting between EPA
 and NRC, prepared by attending NRC staff.

It is my continuing hope that our negotiations will lead to resolution in the
 not too distant future.

Sincerely,

(Signed) William J. Dircks

William J. Dircks
 Executive Director for Operations

Enclosure: As Stated

Identical letter to Mr. Lee Thomas
 Assistant Administrator for Waste and
 Emergency Response

8506200259 850308
 PDR FOIA
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OFC	: WMPC	: WMPC	: WMPC	: WM	: NMSS	: NMSS
NAME	: JLambert:sb	: JJSurmeier	: JOBunting	: REBrowning	: DBMausshardt	: JGDavis
DATE	: 84/05/09	: 5/10/84	: 5/10	: 5/11	: 5/11	: 7/10

MEETING BETWEEN NRC/EPA REPRESENTATIVES

APRIL 13, 1984

THE FOLLOWING CONCLUSIONS AND AGREEMENTS WERE REACHED:

URANIUM MILL TAILINGS

1. LEGAL STAFF FROM EPA WILL REVIEW WITH NRC THE BENEFITS AND MEANS OF CHANGING THE EFFECTIVE DATE OF ITS FINAL MILL TAILINGS STANDARDS. NRC BELIEVES IT IS DESIRABLE TO CONFORM ITS REGULATION SO THAT IT IS SELF-SUFFICIENT PRIOR TO IMPLEMENTING AND ENFORCING THE RCRA GROUNDWATER REQUIREMENTS OF THE FINAL EPA STANDARD. DURING THE PERIOD NRC IS CONFORMING ITS REGULATION, NRC WILL CONTINUE (AND MODIFY AS NECESSARY) ITS ONGOING GROUNDWATER MONITORING AT EXISTING SITES TO DEVELOP DATA TO SUPPORT ITS CONFORMING RULEMAKING AND TO ENSURE CONTINUED PROTECTION OF PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT.

2. EPA WILL WORK WITH NRC TO DEVELOP A MOU WHICH WILL

A. PERMIT NRC TO TAKE SITE SPECIFIC ACTIONS REGARDING ALTERNATIVE CONCENTRATION LEVELS IN GROUNDWATER WITHOUT NEED TO OBTAIN EPA CONCURRENCE. THIS WOULD INVOLVE NRC USING OF THE SAME BASIS FOR THESE SITE SPECIFIC ACTIONS AS EPA WOULD USE UNDER RCRA AND KEEPING EPA INFORMED OF NRC'S ACTIONS.

B. PROVIDE FOR A TECHNICAL INTERFACE BETWEEN NRC AND EPA SO THAT NRC CAN ACCESS EPA EXPERTISE IN THE HAZARDOUS WASTE AREA (E.G., MONITORING, ANALYSES, LINERS, HEALTH EFFECTS, ETC.).

3. EPA AND NRC (SJOBLOM AND BROWNING) WILL DRAFT A PROPOSED JOINT EPA/NRC LETTER TO CONGRESSMAN UDALL AND SENATOR SIMPSON REGARDING ACTIONS THE TWO AGENCIES ARE TAKING TO ENSURE THERE WILL BE NO DUAL REGULATION OF MILL TAILINGS.

4. A LEGISLATIVE CLARIFICATION WILL NOT BE PURSUED AT THIS TIME.

MEETING ATTENDEES

EPA


L. THOMAS
J. CANNON
G. SJOBLUM
J. SKINNER
B. PETERSON
C. HERMAN

NRC

W. DIRCKS
J. DAVIS
W. OLMSTEAD
R. BROWNING

REPORT OF MEETING BETWEEN CHAIRMAN PALLADINO
AND ADMINISTRATOR RUCKELSHAUS ON MAY 21, 1984

PURPOSES

1. DISCUSSION OF THE NUCLEAR REGULATORY COMMISSION'S ("NRC" OR "COMMISSION") IMPLEMENTATION OF THE ENVIRONMENTAL PROTECTION AGENCY'S ("EPA") ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS;
2. CONSIDERATION OF BETTER COORDINATION BETWEEN NRC AND EPA, INCLUDING ESTABLISHMENT OF PERIODIC MEETINGS TO DISCUSS AREAS OF COMMON CONCERN; AND
3. 

ATTENDEES

1. NRC: CHAIRMAN PALLADINO, WILLIAM DIRCKS, JOHN DAVIS, GUY CUNNINGHAM III, ROBERT BROWNING, SHELDON TRUBATCH, NORMAN HALLER.
2. EPA: ADMINISTRATOR RUCKELSHAUS, JOSEPH CANNON, JOHN SKINNER, LEE THOMAS, GLEN SJOBLUM, CHARLES CARTER, MICHAEL FLEMING.

REPORT

THE MEETING WAS HELD AT ADMINISTRATOR RUCKELSHAUS'S OFFICE FROM 2-3 P.M.

CHAIRMAN PALLADINO INITIATED THE DISCUSSION BY SETTING OUT HIS VIEWS ON THE NRC'S IMPLEMENTATION OF EPA'S MILL TAILINGS STANDARDS. [REFER TO ATTACHED TALKING POINTS.]

ADMINISTRATOR RUCKELSHAUS RESPONDED BY NOTING THAT CONGRESS GAVE THE NRC AND EPA JOINT AUTHORITY TO REGULATE MILL TAILINGS AND THAT THE AGENCIES SHOULD WORK TOGETHER TO DISCHARGE THAT RESPONSIBILITY IN AN ORDERLY FASHION. IN HIS VIEW, THE BEST PROCESS FOR ACCOMPLISHING THAT GOAL WOULD BE TO RELY ON THE AGENCIES' STAFFS TO WORK TOGETHER TO SHARPEN THE ISSUES, LEAVING ONLY UNRESOLVABLE STAFF DISPUTES TO BE ESCALATED TO HIGHER MANAGEMENT LEVELS FOR RESOLUTION BY THE TWO AGENCIES.

THE DISCUSSION THEN TURNED TO ALTERNATIVES FOR THE NRC'S IMPLEMENTATION OF EPA'S GROUNDWATER STANDARDS FOR MILL TAILINGS. ADMINISTRATOR RUCKELSHAUS STATED THAT THERE SHOULD BE NO EPA CONCURRENCE IN NRC'S CASE-BY-CASE DETERMINATIONS OF ALTERNATIVE CONCENTRATION LIMITS ("ACL"). MR. CANNON SUGGESTED THAT IT MIGHT BE ENOUGH FOR EPA TO CONCUR IN AN NRC-DEVELOPED METHODOLOGY OR THAT THE NRC COULD

ADD METHODOLOGICAL REFINEMENTS TO EPA'S METHODOLOGY AS LONG AS THOSE REFINEMENTS WERE CONSISTENT WITH EPA'S METHODOLOGY. MR. CANNON STATED THAT SECTION 84C OF THE ATOMIC ENERGY ACT PROVIDED AN INDEPENDENT BASIS FOR EPA'S FORBEARANCE FROM REVIEWING NRC'S CASE-BY-CASE DECISIONS.

MR. THOMAS AMPLIFIED THAT EPA COULD REVIEW THE PROCESS NRC DEVELOPED FOR CONSISTENCY WITH EPA'S PROCESS; THE OVERALL STANDARD WOULD BE NOT DEGRADING PUBLIC HEALTH. MR. SKINNER THEN SUGGESTED SOME ELEMENTS OF A METHODOLOGY FOR DETERMINING ACLS. THESE WOULD INCLUDE THE EVALUATION OF LEACHATE MIGRATION, A PROJECTION OF POSSIBLE HUMAN USE OF THE CONTAMINATED WATER, THE AVAILABILITY OF WELLS, AND RESTRICTIONS ON THE PLACEMENT OF WELLS. MR. SKINNER, MR. THOMAS AND MR. SJOBLUM ALSO STATED THAT THERE WOULD BE NO EPA REVIEW OF NRC'S CASE-BY-CASE APPLICATION OF THE METHODOLOGY AGREED ON BY NRC AND EPA FOR ESTABLISHING ACLS. AT VARIOUS TIME THESE THREE REPRESENTATIVES ALSO STATED THAT ANY REMAINING DISAGREEMENT OVER THE DIVISION OF AUTHORITY BETWEEN NRC AND EPA SHOULD NOT PREVENT THE DEVELOPMENT OF A MEMORANDUM OF UNDERSTANDING ("MOU").

THE CHAIRMAN PROPOSED THAT THE EPA AND NRC STAFFS GET TOGETHER AGAIN TO SEE IF WE CAN BUILD ON MR. THOMAS' APPROACH. THE ADMINISTRATOR QUESTIONED WHETHER BOTH

AGENCIES MAY BE OPENING THEMSELVES UP TO LAWSUITS, BUT IT WAS FELT THAT EPA AND NRC SHOULD STATE THAT, IN THEIR VIEWS, EPA'S CONCURRENCE AUTHORITY IS SATISFIED BY THE NRC'S USE OF EPA'S METHODOLOGY FOR DETERMINING ACLs.

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Mr. Browning suggested that the staffs of the NRC and EPA should work through a test case to determine how a generic methodology could lead to ACLs. Administrator Ruckelshaus and Messrs. Cannon and Thomas agreed that such a trial run was a good idea. Mr. Davis suggested that the NRC should propose a generic approach and apply it to the test case, but EPA staff believed it may take 6-12 months to do the generic methodology.

7.
Chairman Palladino concluded that he would like to get a common piece of paper to share with the Commissioners, then follow up with a specific example. This would be developed through further work between EPA and NRC staffs, but hopefully in less than 6-12 months.

TALKING POINTS FOR 5/21 MEETING WITH RUCKELSHAUS

-- I APPRECIATE THIS OPPORTUNITY TO MEET WITH YOU.

-- SINCE I SENT YOU A LETTER ON JANUARY 16 SETTING FORTH
SOME GENERAL POLICY ISSUES I THOUGHT WE NEEDED TO TALK
ABOUT, OUR STAFFS HAVE BEEN WORKING ^{TOGETHER} GETTING READY FOR
THIS MEETING.

I. -- WOULD LIKE TO START WITH URANIUM MILL TAILINGS, A
SUBJECT OF SIGNIFICANT CONCERN TO NRC AND THE
CONGRESS.

I. URANIUM MILL TAILINGS

- IN THE NRC'S AUTHORIZATION ACT FOR FY 1982-83, THE URANIUM MILL TAILING RADIATION CONTROL ACT (UMTRCA) WAS AMENDED. EPA WAS TO ISSUE FINAL STANDARDS BY OCTOBER 1, 1983 OR LOSE JURISDICTION TO THE NRC.
- ^{MID} IN ~~1982~~ 1983, NRC COMMENTED ON EPA PROPOSED STANDARDS. A MAJOR THRUST OF OUR COMMENTS WAS THAT THE STANDARDS APPEARED TO PUT EPA INTO SITE-BY-SITE PERMITTING WHICH WE BELIEVE IS CONTRARY TO UMTRCA. EPA DID NOT ACCEPT THESE COMMENTS.
- EPA'S STANDARDS WERE ISSUED BY OCTOBER 1 AND THE NRC WAS TO IMPLEMENT ^{THEM} BY APRIL 1, 1984.
- DUE TO THE PROBLEMS WE HAVE WITH SOME PARTS OF THE STANDARDS, WE HAVE NOT YET ISSUED CONFORMING RULES.
- THE MOST SEVERE PROBLEM IS THE REQUIREMENT FOR ZERO DEGRADATION OF GROUNDWATER, A STANDARD THAT IT MAY NOT BE POSSIBLE TO MEET IN PRACTICE. (AFFECTS CONCENTRATION LIMITS AS WELL AS LINER REQUIREMENTS.)

- A SECOND PROBLEM IS COMPLEXITY OF ANALYSIS TECHNIQUES FOR MONITORING OVER 300 HAZARDOUS CONSTITUENTS, MANY OF WHICH CANNOT OCCUR AT MILL TAILINGS SITES.

- WE BELIEVE THE LAW REQUIRES NRC AND AGREEMENT STATES TO IMPLEMENT AND ENFORCE THE EPA STANDARDS THOUGH OUR RULES ARE NOT IN PLACE.

- WE WANTED TO WORK OUT SOME ARRANGEMENTS WITH THE EPA STAFF TO COVER THE TIME FRAME IT WILL TAKE TO GET OUR RULES RELATED TO GROUNDWATER IN PLACE. WE ESTIMATE THAT WILL TAKE ABOUT 3 YEARS. WE ALSO NEED TO WORK OUT LONG TERM ARRANGEMENTS WITH EPA.

- OUR OBJECTIVES, BOTH FOR THE NEAR-TERM AND LONG-TERM, MUST RECOGNIZE EPA AND NRC RESPONSIBILITIES UNDER THE LAW. SPECIFICALLY, WE BELIEVE:
 - THERE SHOULD BE A SINGLE COMPREHENSIVE SET OF REGULATIONS GOVERNING THE PROTECTION OF GROUND WATER UNDER URANIUM MILL TAILINGS ISSUED BY NRC AND CONCURRED IN BY THE EPA USING A FRAMEWORK TO BE ESTABLISHED; AND

- THERE SHOULD BE A SINGLE REGULATORY AGENCY CONTACT FOR APPLICANTS AND LICENSEES. THAT AGENCY SHOULD BE THE NRC OR APPROPRIATE AGENCY IN AN NRC AGREEMENT STATE WITH AUTHORITY TO REGULATE URANIUM MILL TAILINGS.

-- AS FIRST OPTION, OUR STAFFS WORKED TOGETHER TO SEE IF THERE WOULD BE SOME ADMINISTRATIVE MEANS TO EXTEND THE EFFECTIVE DATE OF THE EPA STANDARDS. THIS WAS OUR PREFERRED APPROACH, BUT EPA STAFF FELT THAT IT COULD NOT AGREE TO EXTEND THE EFFECTIVE DATE.

-- AS PART OF THIS OPTION, WE ALSO TRIED TO AVOID DUAL CASE-BY-CASE REGULATION BY HAVING EPA AGREE THAT NRC'S AUTHORIZATION UNDER SECTION 84C OF ATOMIC ENERGY ACT MEANS WE CAN APPROVE SITE SPECIFIC ALTERNATIVES WITHOUT EPA CONCURRENCE. (SEE ENCLOSURE 1A). THERE WAS AN IMPASSE ON THIS CONCEPT; EPA STAFF DOES NOT AGREE THAT NRC CAN APPROVE ALTERNATIVES WITHOUT EPA CONCURRENCE.

*different new
opportunity is
not at
impasse
now*

AS A SECOND OPTION, WE TRIED TO REACH AGREEMENT WITH EPA THAT OUR IMPLEMENTATION COULD PROCEED IN A STEPPED MANNER THAT WOULD HAVE TWO PROVISIONS:

- .. UNTIL NRC RULES ARE IN PLACE, OUR STAFFS WOULD AGREE TO DEVELOP AN INTERIM GROUNDWATER PROGRAM

UTILIZING TO THE MAXIMUM EXTENT POSSIBLE EXISTING
NRC REQUIRED MONITORING PROGRAMS.

.. EPA WOULD AGREE THAT, UNDER 84C, WE CAN APPROVE
SITE SPECIFIC ALTERNATIVES WITHOUT EPA CONCURRENCE
SO LONG AS WE USE AN EPA DEVELOPED GENERIC
METHODOLOGY, ^{ONE} THAT DOES NOT REMOVE NRC'S 84C
FLEXIBILITY.

-- OUR STAFFS SEEM TO HAVE REACHED SOME UNDERSTANDING ON
THE FIRST PART, ALTHOUGH IT IS NOT CLEAR THAT EPA WOULD
SIGN AN AGREEMENT TO THAT EFFECT.

-- THERE STILL MAY BE AN IMPASSE ON 84C, ALTHOUGH SOME LAST
MINUTE NEGOTIATIONS BETWEEN OUR STAFFS ^{MAY} ~~COULD~~ HAVE
HELPED. HOWEVER, NRC STAFF, AND I, DO NOT FEEL
COMFORTABLE WITH EPA DEVELOPING GENERIC METHODOLOGY
BECAUSE IT MAY REMOVE OUR 84C FLEXIBILITY.

-- WE ALSO HAVE ONE MORE OPTION. WITH NO EPA AGREEMENT ON
EITHER OF THE ABOVE TWO OPTIONS, THE NRC COULD SIMPLY
ISSUE ORDERS TO ITS LICENSEES TO COMPLY WITH EPA
STANDARDS UNTIL OUR RULES ARE IN PLACE. UNDER THIS
APPROACH, WE COULD TAKE A HARD LINE OR A MORE REASONABLE
POSTURE:

- .. HARD-LINE WOULD MEAN WE WOULD ENFORCE TO LETTER OF LAW, AND SEEK EPA CONCURRENCE ON ALL ALTERNATIVES; THIS COULD BE AT VARIANCE WITH OUR 84C AUTHORITY AND MAY ELICIT A STORM OF PROTEST IF EPA INSISTS ON ZERO DEGRADATION.
- .. A MORE REASONABLE POSTURE WOULD BE TO GO AHEAD WITH NRC DECISIONS ON ALTERNATIVES WITHOUT SEEKING EPA CONCURRENCE, USING 84C AS THE BASIS, BUT KEEP EPA INFORMED.
- REGARDING THE ABOVE OPTIONS, IT MAY BE THAT WE COULD DEVELOP SOME WORD CHANGES TO A CONCEPTUAL APPROACH THAT OUR STAFFS HAVE BEEN WORKING ON. THAT MAY THEN BE A BASIS FOR POSSIBLE AGREEMENT THAT I COULD TAKE BACK TO *the NR* ~~MY~~ COMMISSION FOR REVIEW. (SEE ENCLOSURE 1B)
- IN BRINGING THIS MATTER BACK TO THE COMMISSION, HOWEVER, THERE ARE OTHER THINGS NRC NEEDS TO DECIDE AS WELL:
 - .. WE ALSO HAVE TO RESPOND TO THE CONGRESS TELLING *Depending on the* THEM WHAT APPROACH WE ARE TAKING; THIS MAY LEAD TO *com* SOME MEMBERS CALLING HEARINGS OR SEEKING NEW *160* LEGISLATION.

.. WE ALSO WILL HAVE TO GIVE FURTHER CONSIDERATION TO
OTHER LEGAL AVENUES THAT SOME ELEMENTS OF THE
COMMISSION MAY WISH TO PURSUE.

-- NOW I WOULD LIKE TO GET YOUR VIEWS ON THIS ENTIRE
SUBJECT.

B

5-21-84 File #25.1 w/
ends

(406.3) w/
ends

Package 1 - Pre-briefing materials
of 4/14/84 w/ Chairman in
preparation for Chairman's
meeting w/ EPA

Package 2 - Final package of materials
for 5/4/84 meeting between
Palladino/Ruckelshaus (which
was actually held 5/21/84)

(This material provided
to DEC file by
Janet Lambert)

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OUTLINE FOR MEETING WITH RUCKELSHAUS

I. PREAMBLE

The Atomic Energy Act (AEA), the Resource Conservation and Recovery Act (RCRA), and the Clean Air Act (CAA) have resulted in dual regulation of NRC licensed activities by both NRC and EPA. Both agencies are sensitive to the regulatory problems created by this situation. They have agreed to work together to develop a regulatory approach which accommodates the mandates of the AEA, RCRA and CAA and which minimizes dual regulation. At the same time both agencies are committed to assuring that these activities are regulated in a manner which adequately protects the public health and safety. The purpose of this meeting is to discuss the sources of regulatory overlap and to agree on steps that must be taken to resolve the resulting problems.

II. ISSUES FOR DISCUSSION AND DESIRED OUTCOMES

- A. Achieving better synchronization of EPA and NRC actions for shared areas of responsibility.

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RUCKELSHAUS MEETING

84/04/25

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1. Examples of schedule problems involving past regulatory action.

	<u>NRC Final Rule</u>	<u>EPA Standards-Action*</u>
a. UMT	10/80	Final 9/83

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B. Jurisdictional Overlap/Dual Regulation

c. UMTRCA - Required EPA concurrence on NRC RCRA related rules.

2. Resulting Areas of Dual Regulation

a. Existing

- 1) Licensed Mill Tailings Disposal - RCRA standards.

C. Specific Uranium Mill Tailings Issues

1. Problems

- a. NRC needs time to develop rule addressing implementation of complex RCRA requirements.
- b. Need to work out arrangement whereby we can overcome dual regulation requirements of EPA standards which specifically requires EPA concurrence to change:

- 1) List of Hazardous Constituents.
- 2) Alternate concentration levels.

- 2. Status: NRC and EPA Senior Staffs believe that there is a way in which EPA could grant NRC more time to implement the EPA standard; and that protocols can be developed between staffs to enable EPA to concur on the methodology to delist Hazardous Constituents or approve alternate concentration levels without site by site review. Plan to accomplish this outlined in proposed draft Interagency Programmatic Agreement.

SEE ENCLOSURE 2: Notes of April 13, 1984 EPA/NRC meeting.

3. Desired Outcome

- a. EPA Administrator/NRC Chairman endorse staff approach as outlined in Conceptual Interagency Programmatic Agreement under the umbrella EPA/NRC MOU.

SEE ENCLOSURE 6: Conceptual Interagency Programmatic Agreement.

- b. Administrator/Chairman sign your memo to staffs directing Interagency Programmatic Agreement for Regulation of Mill Tailings be drafted to incorporate staff approach outlined in the Conceptual Programmatic Agreement discussed above.

SEE ENCLOSURE 7: Memo to respective staffs to develop Procedural Agreement.

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- c. EPA Administrator agrees to issue NRC relief to enforce RCRA Standards for (all/existing mills) [Strike one] until NRC publishes Rule. (3-?? yrs).

SEE ENCLOSURE 8: Minimum exemption requirements of NRC, NRC actions of enforcing remaining EPA standards, resources required to undertake activities.

- d. EPA Administrator agrees to cosign a joint NRC/EPA response to Congress (Udall, Simpson, Domenici) outlining:

- 1) Plan to resolve UMT issues.
- 2) Commitment and approach to achieve coordinated EPA/NRC actions on matters of shared regulatory responsibilities.

SEE ENCLOSURE 9: Draft letter for signature between Chairman and Administrator.

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ENCLOSURES

ENCLOSURE 2: Notes of April 13, 1984 EPA/NRC meeting.

ENCLOSURE 6: Conceptual Interagency Programmatic Agreement.

ENCLOSURE 7: Memo to respective staffs to develop Procedural Agreement.

ENCLOSURE 8: Minimum exemption requirements of NRC, NRC actions of enforcing remaining EPA standards, resources required to undertake activities.

ENCLOSURE 9: Draft letter for signature between Chairman and Administrator.

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MEETING BETWEEN NRC/EPA REPRESENTATIVES

APRIL 13, 1984

THE FOLLOWING CONCLUSIONS AND AGREEMENTS WERE REACHED:

URANIUM MILL TAILINGS

1. LEGAL STAFF FROM EPA WILL REVIEW WITH NRC THE BENEFITS AND MEANS OF CHANGING THE EFFECTIVE DATE OF ITS FINAL MILL TAILINGS STANDARDS. NRC BELIEVES IT IS DESIRABLE TO CONFORM ITS REGULATION SO THAT IT IS SELF-SUFFICIENT PRIOR TO IMPLEMENTING AND ENFORCING THE RCRA GROUNDWATER REQUIREMENTS OF THE FINAL EPA STANDARD. DURING THE PERIOD NRC IS CONFORMING ITS REGULATION, NRC WILL CONTINUE (AND MODIFY AS NECESSARY) ITS ONGOING GROUNDWATER MONITORING AT EXISTING SITES TO DEVELOP DATA TO SUPPORT ITS CONFORMING RULEMAKING AND TO ENSURE CONTINUED PROTECTION OF PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT.

2. EPA WILL WORK WITH NRC TO DEVELOP A MOU WHICH WILL

A. PERMIT NRC TO TAKE SITE SPECIFIC ACTIONS REGARDING ALTERNATIVE CONCENTRATION LEVELS IN GROUNDWATER WITHOUT NEED TO OBTAIN EPA CONCURRENCE. THIS WOULD INVOLVE NRC USING OF THE SAME BASIS FOR THESE SITE SPECIFIC ACTIONS AS EPA WOULD USE UNDER RCRA AND KEEPING EPA INFORMED OF NRC'S ACTIONS.

B. PROVIDE FOR A TECHNICAL INTERFACE BETWEEN NRC AND EPA SO THAT NRC CAN ACCESS EPA EXPERTISE IN THE HAZARDOUS WASTE AREA (E.G., MONITORING, ANALYSES, LINERS, HEALTH EFFECTS, ETC.).

3. EPA AND NRC (SJOBLUM AND BROWNING) WILL DRAFT A PROPOSED JOINT EPA, NRC LETTER TO CONGRESSMAN JOALL AND SENATOR SIMPSON REGARDING ACTIONS THE TWO AGENCIES ARE TAKING TO ENSURE THERE WILL BE NO DUAL REGULATION OF MILL TAILINGS.

4. A LEGISLATIVE CLARIFICATION WILL NOT BE PURSUED AT THIS TIME.

MEETING ATTENDEES

EDA

L. THOMAS
J. CANNON
G. SJOBLUM
J. SANNER
B. PETERSON
C. HERMAN

NRC

W. DIRCKS
J. DAVIS
W. CLMSTEAD
R. BROWNING

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CONCEPTS FOR INTERAGENCY PROGRAMMATIC AGREEMENT
BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY
ON URANIUM MILL TAILINGS REGULATION

A major goal of NRC's conforming rulemaking will be to develop regulations that can be implemented by NRC or Agreement States, as applicable, without involving EPA in any NRC or Agreement State regulatory decisions on mill tailings disposal.

Based on negotiations to date, the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Environmental Protection Agency (EPA) believe it is appropriate to pursue a programmatic agreement to define interagency responsibilities associated with implementation of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act (RCRA), in the regulation of mill tailings disposal. This programmatic agreement will establish the following

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principles for interagency coordination on mill tailings regulation:

1. For those uranium mills currently under NRC license, EPA will defer the effective date in 40 CFR 192 Subpart D, as it relates to the groundwater portions of its requirements, until NRC completes its conforming rulemaking. This rulemaking will establish at NRC-licensed mill tailings sites the NRC regulations required by statute for those hazardous materials normally subject to EPA jurisdiction under the Solid Waste Disposal Act, as amended. Consistent with the requirement of Section 84a.(3) that NRC regulations be "to the maximum extent practicable, at least comparable" to EPA regulations in this area, this deferral for mill tailings sites currently under NRC license is to be no more than the minimum necessary as determined by EPA in consultation with NRC. If no other options are available for postponing the effectiveness of those RCRA-related portions of its mill tailings standards whose implementation is to be delayed for existing sites, EPA agrees to pursue a rulemaking to accomplish this purpose.

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(2) NRC agrees that the final conforming rule will incorporate provisions for protection of groundwater that are, to the maximum extent practicable, at least comparable to SWDA requirements. NRC's final rule incorporating groundwater protection provisions will be subject to EPA concurrence as required by law. Available implementing documents such as Regulatory Guides, will be given to EPA for review and coordination in conjunction with its concurrence.

(3) During the interim while NRC is conforming its regulation, NRC will enforce at existing NRC-licensed mill tailings sites those portions of the EPA standards whose effective date has not been deferred pending completion of the NRC rulemaking. NRC also agrees to continue to enforce (and modify as necessary) its ongoing groundwater monitoring and mitigation requirements at existing mill tailings sites to ensure protection of public health and safety and the environment. Also during this interim, NRC agrees to enforce in full EPA standards in 40 CFR 192 for groundwater protection at any new uranium recovery facilities not currently under license.

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(4) EPA agrees to participate with NRC during this interim period in the development of a data base for hazardous constituents at mill tailings sites as part of the technical basis for NRC's conforming rule and EPA's concurrence. EPA agrees to provide technical consultation and services to NRC for the development of the necessary technical support for the conforming rule. NRC agrees to reimburse EPA for all necessary and reasonable costs arising from such consultation and services as mutually established by the two agencies.

(5) EPA and NRC agree that, in order to eliminate dual regulation, NRC should be able to approve alternate regulatory requirements submitted by applicants under Section 84c. of the Atomic Energy Act, as amended, without any site-related specific EPA concurrence. Such alternate regulatory requirements could include, among other things, alternate concentration limits for off-site contamination by hazardous materials, alternate lists of hazardous materials, and alternate types of liners. NRC agrees that EPA will concur in the methodology NRC would expect to use in making decisions on such alternate regulatory requirements. Appropriate protocols defining the methodology will be

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developed and jointly approved by EPA and NRC as an integral part of NRC's rulemaking.

(6) EPA agrees that Agreement State implementation of EPA standards at mill tailings sites may take place pursuant to the same understandings and agreements applicable to NRC licensing and regulation.

(7) At least until the conclusion of the NRC conforming rulemaking, the Commission Chairman and EPA Administrator agree to meet at least annually to approve coordinated regulatory plans and discuss any issues arising from implementation of any of the matters agreed to under this programmatic agreement.

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MEMORANDUM FOR: William J. Dircks
Executive Director for Operations

FROM: Nunzio J. Palladino, Chairman

SUBJECT: IMPLEMENTATION OF INTERAGENCY PROGRAMMATIC
AGREEMENT WITH THE U.S ENVIRONMENTAL PROTECTION
AGENCY ON MILL TAILINGS REGULATION

Please be advised that all appropriate NRC staff should be instructed to begin preparing an interagency programmatic agreement conforming to the attached conceptual paper, which contains the principles agreed to at my recent meeting with EPA Administrator Ruckelshaus. Mr. Ruckelshaus is issuing these instructions to his staff concurrently.

Nunzio J. Palladino

Attachment: Conceptual
EPA-NRC Agreement

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Enclosure 7

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ENCLOSURE 8 - Minimum Exemption Requirements of NRC

To be forthcoming

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The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As you and other Congressional observers have recently emphasized, there have been grounds for growing concern in the past several months for the coordination of U.S. Nuclear Regulatory Commission (NRC) and U.S. Environmental Protection Agency (EPA) regulation of uranium mill tailings. Responding to that concern, NRC and EPA staff have been discussing ways to clarify our respective responsibilities and improve our coordination. Capping the first milestone in that process, we recently met with each other to approve the enclosed conceptual agreement, which sets forth a number of interagency commitments in the development of our respective regulatory actions in the mill tailings area. Among other things, this agreement provides that:

1. For those uranium mills currently under NRC license, EPA will defer the effective date in 40 CFR 192 Subpart D, as it relates to the groundwater-related portions of its requirements, until NRC completes a conforming rulemaking.

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This rulemaking will establish at NRC-licensed mill tailings sites the NRC regulations required by statute for those hazardous materials normally subject to EPA jurisdiction under the Solid Waste Disposal Act, as amended. We expect the Commission rulemaking to take about three years.

2. Consistent with the requirement of Section 84a.(3) that NRC regulations be "to the maximum extent practicable, at least comparable" to EPA regulations in this area, this deferral for mill tailings sites currently under NRC license is to be no more than the minimum necessary, as determined by EPA in consultation with NRC. During the interim, NRC will enforce at existing NRC-licensed mill tailings sites those portions of the EPA standards whose effective date has not been deferred. NRC will also enforce in full the EPA standards in 40 CFR Part 192 for groundwater protection at any new uranium recovery facilities not currently under NRC license.

3. During the interim before final NRC rules are in place, NRC and EPA will work together to develop a sound technical basis for regulation that will permit EPA to concur in the conforming NRC rule as required under Section 84a.(3).

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4. Providing that there is a sound technical basis for the NRC regulation, EPA concurrence in that regulation will permit NRC to approve, without further EPA concurrence, alternatives to specific regulatory requirements at specific sites, as provided under Section 84c. of the Atomic Energy Act, as amended. Such alternate regulatory requirements could include, among other things, alternate concentration limits for off-site contamination by hazardous material, alternate lists of hazardous materials, and alternate types of liners.

5. EPA will concur in the methodology NRC would apply in making any such case-by-case determinations on specific alternative requirements. Appropriate protocols defining the methodology will be developed and jointly approved by EPA and NRC as an integral part of NRC's rulemaking. RCRA, which provides for the regulation of hazardous materials under the Solid Waste Disposal Act, would thus be implemented at NRC-licensed mill tailings sites entirely by NRC, pursuant to the rules and regulatory methodology in which EPA had concurred.

6. EPA agrees that Agreement State implementation of the EPA mill tailings standards may take place under the same understandings and agreements applicable to NRC licensing and regulation.

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7. Until the completion of NRC rulemaking, cognizant senior NRC and EPA management staff will meet at least quarterly to coordinate plans for mill tailings-related regulatory action, including the development of coordinated rulemaking and standard-setting schedules specifically providing for each other's comments or concurrence, as appropriate.

8. Until the completion of NRC rulemaking, the Commission Chairman and the Agency Administrator will meet at least annually to approve coordinated schedules and take appropriate action on issues identified in the discussions of their respective staffs.

While we recognize that the differences in NRC and EPA statutory responsibilities may transcend our ability to cope with them by administrative means, we believe it is in the best interest of the nation as a whole to begin addressing these differences in a way that runs least risk of disrupting the planning of the states, industries, and other parties involved. We hope that the

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ments we have outlined here will enable both
their respective statutory responsibilities
further legislative action.

Sincerely,

Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory
Commission

William
Ruckelshaus, Administrator
U.S. Environmental Protection
Agency

DRAFT

Draft of Package

2

for 5/17/84
briefing

TALKING POINTS

- 1 -

NRC/EPA MEETING

DISCUSSION AREAS -- RCRA - LLW - MILL TAILINGS

INTRODUCTION

NRC has not taken any major objections to the generally-applicable standards issued for radiation by EPA as they pertain to mill tailings and low level waste. NRC's principal concerns are with nonradiological standards issued in response to UMTRCA and the Solid Waste Disposal Act, as amended (Resource Conservation and Recovery Act [RCRA]).

A. RCRA ISSUES

1. Statutory Basis for Applying RCRA to Mill Tailings and LLW

NRC staff have concluded that EPA was within its statutory mandates in applying nonradiological standards to mill tailings and low level waste based on the following:

- a. For mill tailings: Section 84 of AEA (UMTRCA)

B. SPECIFIC MILL TAILINGS ISSUES

1. Rulemaking

NRC was unable to conform the mill tailing regulation to the EPA standards within its legislatively mandated timeframe (April 1984). NRC staff proposed a two step rulemaking to meet at least part of the April mandate and to provide a clean-up basis for Fuel Cycle remedial actions. Rulemaking to conform to RCRA portion of the EPA mill tailings standard will take much longer due to technical complexities. Some of

TALKING POINTS

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the technical issues that must be addressed in the rulemaking are:

- a. Mill tailings standard incorporated by reference entire portions of EPA's RCRA regulations (Part 264) that among other requirements effectively specify "synthetic liners."
- b. NRC would establish a monitoring program to determine the nature and extent of the hazardous constituents in mill tailings to establish a basis for our rulemaking. EPA would participate in the development of the monitoring program and the analysis of the data to facilitate their concurrence on our regulation as required under UMTRCA.

2. Problems with Enforcing EPA Standard at Existing Sites

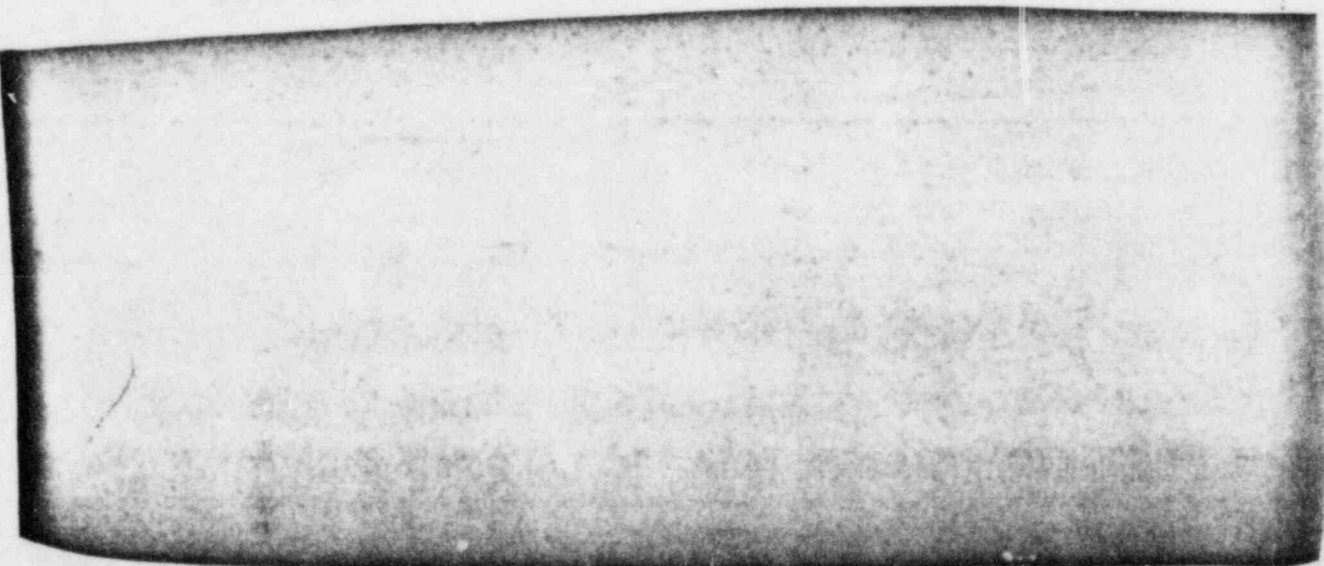
- a. EPA's synthetic liners may be unwarranted for existing licensees in some situations. NRC has no discretion.
- b. Technical problems of synthetic liners for extension of the "existing portion" of mill sites.
- c. NRC doesn't have any leeway regarding hazardous constituents on the extent and scope of monitoring at licensed sites.

TALKING POINTS

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- d. EPA's standards require EPA's concurrence on the establishment of any alternate concentration levels or delisting of hazardous constituents. This would impact on NRC's approval of clean-up proposals by mills or of modified monitoring programs.


3. Recommended Course of Action

- a. Based on perceived political considerations we should not pursue legislative clarification at this time.
 - b. NRC should proceed with a two step rulemaking.
 - c. NRC would seek relief from EPA implementing ground water standard.
 - d. NRC and EPA would pursue technical program to assess non-radiological hazardous constituents in mill tailings.
- 

SUMMARY OF ISSUES FOR MEETING WITH EPA

THE ISSUES WHICH ARE CREATING INTERFACE PROBLEMS FOR EPA AND NRC CAN BE GROUPED INTO THREE MAJOR CATEGORIES: DUAL REGULATORY REQUIREMENTS; AGENCY JURISDICTIONAL ISSUES; AND SCHEDULING AND TIMING OF EPA STANDARDS AND NRC REGULATIONS. THE ATTACHED PAPERS DISCUSS HOW THESE ISSUES IMPACT ON THE MAIN SUBJECT AREAS REQUIRING EPA/NRC INTERFACE. THIS SUMMARY HIGHLIGHTS THE ISSUES DISCUSSED IN THESE PAPERS.





URANIUM RECOVERY ISSUES

NRC AND EPA DEVELOPED THEIR MILL TAILINGS REGULATIONS WITHOUT FULLY COORDINATING THEIR EFFORTS. WHEREAS BOTH AGENCIES ARE MANDATED TO PROTECT THE PUBLIC HEALTH AND SAFETY, EPA HAS THE ADDITIONAL RESPONSIBILITY FOR PROTECTING THE ENVIRONMENT, AND THROUGH RCRA, RESOURCE CONSERVATION. IN WORKING TO CONFORM TO EPA STANDARDS, NRC STAFF HAS FOUND THE APPLICATION OF RCRA REQUIREMENTS FOR SYNTHETIC LINERS FOR TAILINGS IMPOUNDMENTS AS WELL AS OTHER REQUIREMENTS FOR GROUND WATER PROTECTION MAY BE UNWARRANTED FOR EXISTING LICENSES IN SOME SITUATIONS. IT IS ALSO POSSIBLE THAT SOME LICENSEES, WHO ARE UNABLE TO COMPLY WITH THE EPA REGULATIONS, MAY BE FORCED TO SHUT DOWN THEIR OPERATIONS. ANOTHER PROBLEM FOR NRC IN USING EPA'S PRESCRIPTIVE STANDARDS IS THAT EPA WOULD HAVE TO CONCUR IN ANY DEVIATIONS FROM ITS PROVISIONS FOR NON-DEGRADATION OF GROUND WATER. NRC STAFF BELIEVES THAT APPLICATION OF RCRA TO OUR EXISTING LICENSEES MAY IMPAIR OUR ABILITY TO PERFORM OUR LICENSING FUNCTION IN A TIMELY MANNER.

URANIUM RECOVERY ISSUES

DESCRIPTION OF THE ISSUE

ALTHOUGH THERE ARE A NUMBER OF ISSUES RELATING TO URANIUM RECOVERY, THE TWO MOST SIGNIFICANT ARE THOSE OF SCHEDULING OF EPA STANDARDS/NRC REGULATIONS, AND THE INCLUSION OF ENTIRE PROVISIONS OF PART 264 OF THE RCRA REGULATIONS BY REFERENCE IN THE MILL TAILINGS STANDARD AND THE RESULTING INFLEXIBILITY IMPOSED ON NRC AND NRC LICENSEES.

GIVEN EPA'S FAILURE TO PROMULGATE ITS URANIUM RECOVERY STANDARDS IN A TIMELY FASHION, AS MANDATED BY THE URANIUM MILL TAILINGS RADIATION CONTROL ACT (UMTRCA), NRC HAD TO CHOOSE BETWEEN PROMULGATING ITS REGULATIONS WITHOUT THE BENEFIT OF EPA COORDINATION OR MISSING ITS DEADLINE. NRC CHOSE THE FORMER WHICH RESULTED IN CONGRESSIONAL HEARINGS AND LAWSUITS FILED BY THE INDUSTRY, CLAIMING THAT THE REGULATIONS WERE IMPRACTICABLE, TOO COSTLY AND UNTIMELY IN THAT THEY WERE ISSUED PRIOR TO EPA'S PROMULGATION OF ITS FINAL ENVIRONMENTAL STANDARDS. SUBSEQUENTLY, FOLLOWING CONGRESSIONAL ACTION, PORTIONS OF THE NRC REGULATIONS WERE SUSPENDED FOLLOWING EPA PUBLICATION OF ITS PROPOSED STANDARDS.

UNDER A CONGRESSIONAL MANDATE TO PUBLISH ITS URANIUM RECOVERY STANDARDS BY SEPTEMBER 30, 1983 OR LOSE ITS STATUTORY AUTHORITY TO NRC, EPA ON THE LAST DAY, PROMULGATED ITS FINAL STANDARD.

WHILE CONSIDERABLE EFFORTS WILL BE REQUIRED FOR THE NRC TO CONFORM ITS REGULATIONS TO THE EPA STANDARDS IN THESE AREAS, THE MAJOR IMPACT OF THE EPA STANDARD IS RELATED TO EPA'S IMPLEMENTATION OF RCRA FOR MILL TAILINGS IN THE AREA OF GROUND WATER PROTECTION. EPA'S 40 CFR PART 264 RCRA STANDARDS ARE BASED ON NON-DEGRADATION OF GROUND WATER USING A SYNTHETIC LINER WITH LITTLE, IF ANY, DEGREE OF FREEDOM FOR ALTERNATIVE APPROACHES. IN CONTRAST, NRC'S 10 CFR PART 40 APPENDIX A APPROACH WAS CENTERED AROUND NO OFF-SITE DEGRADATION OF GROUND WATER BEYOND AQUIFER USE CATEGORY. FURTHERMORE, EPA STANDARDS ARE VERY PRESCRIPTIVE. IF NRC CONSIDERS ANY DEVIATION FROM THE EPA NON-DEGRADATION GROUNDWATER PROVISION OUTSIDE THE 500 METER LINE, THE DEVIATION MUST BE CONCURRED IN BY EPA ON A CASE-BY-CASE BASIS.

IMPACT OF THE ISSUE

AS WE UNDERSTAND IT, THE INDUSTRY HAS FILED A LAWSUIT AGAINST EPA OVER THE MILL TAILINGS STANDARDS. MEANWHILE, NRC IS UNABLE TO PROMULGATE A CONFORMED APPENDIX A WITHIN ITS LEGISLATIVELY MANDATED TIMEFRAME. NRC STAFF HAS DEVELOPED AND PROPOSED AMENDMENTS TO APPENDIX A TO CONFORM ITS REGULATIONS TO EPA STANDARDS FOR AREAS NOT RELATED TO GROUND WATER PROTECTION. AN ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPRM) HAS BEEN PREPARED WHICH OUTLINES PLANS FOR FURTHER AMENDMENTS TO 10 CFR PART 40 TO INCORPORATE THE GROUNDWATER PROVISIONS IMPOSED BY THE EPA STANDARD.

THE PROBLEM ARISING FROM THE EPA'S REFERENCE TO RCRA IS THREE-FOLD: (1) THE EPA HAS IMPOSED REQUIREMENTS SUCH AS SYNTHETIC LINERS AND MONITORING FOR ALL THE SUBSTANCES ON THE HAZARDOUS CONSTITUENTS LIST THAT NRC STAFF BELIEVE TO BE UNWARRANTED GIVEN THE REMOTE LOCATIONS OF MOST OF THE TAILINGS SITES AND THE RELATIVELY POOR QUALITY OF THE AFFECTED AQUIFERS; (2) NRC STAFF MAY NOT BE ABLE TO PROVIDE NEPA JUSTIFICATION FOR ALL EPA SPECIFIED REQUIREMENTS (MONITORING FOR PCB'S, DIOXIN, ETC., AND (3) THE POSSIBLE SHUT DOWN OF OPERATING URANIUM MILLS THAT ARE UNABLE TO COMPLY WITH THE EPA STANDARD EVEN THOUGH NRC STAFF JUDGES THAT CURRENT PRACTICES AT THESE SITES ADEQUATELY PROTECT THE HEALTH AND SAFETY AND THE ENVIRONMENT.

STATUS OF THE ISSUE

PREVIOUS DISCUSSIONS BETWEEN THE NRC AND EPA INDICATE THAT BOTH SIDES ARE SENSITIVE TO THE ISSUES RAISED IN THIS PAPER. TO DATE, HOWEVER, LITTLE HAS BEEN ACCOMPLISHED IN RESOLVING THESE ISSUES. THE NRC HAS ESTABLISHED COORDINATION WITH EPA IN DEVELOPING ITS RCRA-RELATED URANIUM MILL TAILINGS REGULATIONS. THE NRC STAFF INTENDS TO MAINTAIN THESE CONTACTS SO AS TO IDENTIFY AND RESOLVE ANY INCOMPATIBILITIES IN THE EARLY STAGES OF DEVELOPMENT. AT THIS WRITING, A PAPER WITH PROPOSED CHANGES TO APPENDIX A AND AN ANPR ON NRC CONFORMANCE TO EPA STANDARDS HAS BEEN FORWARDED FOR COMMISSION APPROVAL.

POSSIBLE SOLUTIONS

(1) SECTION 84(C) OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, RELATING TO URANIUM MILL TAILINGS AUTHORITY PROVIDES THAT A LICENSEE MAY PROPOSE ALTERNATIVES TO SPECIFIC REQUIREMENTS ADOPTED AND ENFORCED BY THE COMMISSION. IT MAY BE POSSIBLE TO UTILIZE THIS PROVISION TO PROVIDE SOME FLEXIBILITY TO NRC LICENSING ACTIVITIES EVEN THOUGH THIS PROVISION PROVIDES THAT THE ALTERNATIVES WILL BE "EQUIVALENT TO, TO THE EXTENT PRACTICABLE, OR MORE STRINGENT THAN" ANY FINAL STANDARDS PROMULGATED BY THE EPA. IN SOME CIRCUMSTANCES NATURAL LINERS SUCH AS CLAY MAY BE ABLE TO MEET THE STATUTORY TEST. IT REMAINS TO BE SEEN WHETHER THIS APPROACH WILL WORK IN PRACTICE BUT NRC STAFF IS EXPLORING THIS POSSIBILITY.

(2) ANOTHER ALTERNATIVE THAT NRC STAFF BELIEVES MIGHT HAVE MERIT WOULD BE FOR CONGRESS TO IMPOSE A MORATORIUM OF SEVERAL YEARS ON THE RCRA RELATED PORTIONS OF THE EPA STANDARD TO GIVE THE NRC TIME TO FINALIZE ITS CONFORMING CHANGES. (NOTE: THIS IS NOT A SOLUTION BUT IT WOULD SERVE TO BUY US TIME.)

- THE URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978 (UMTRCA) REQUIRES NRC TO INSURE THAT BYPRODUCT MATERIAL IS MANAGED TO CONFORM TO EPA STANDARDS AND "GENERAL REQUIREMENTS ESTABLISHED BY THE COMMISSION, WITH THE CONCURRENCE OF THE [EPA] ADMINISTRATOR," WHICH ARE, "TO THE MAXIMUM EXTENT PRACTICABLE, AT LEAST COMPARABLE TO" EPA REQUIREMENTS APPLICABLE TO HAZARDOUS WASTES UNDER THE SOLID WASTE DISPOSAL ACT, AS AMENDED BY RCRA. EPA'S MILL TAILINGS STANDARDS OF SEPTEMBER 30, 1983

INCORPORATE RCRA STANDARDS FOR NON-RADIOACTIVE HAZARDOUS
WASTES BY REFERENCE.

B Finals Package 2
(for 5/4/84 briefing)

MEETING WITH MR. RUCKELSHAUS

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9. URANIUM RECOVERY ISSUES
10. STATUTORY BASIS FOR OVERLAPPING JURISDICTION OF EPA STANDARDS

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NRC/EPA MEETING

DISCUSSION AREAS -- -RCRA - LLW - MILL TAILINGS, CAA,
SUPERFUND/TMI

INTRODUCTION


NRC HAS NOT TAKEN ANY MAJOR OBJECTIONS TO THE GENERALLY-APPLICABLE STANDARDS ISSUED FOR RADIATION BY EPA AS THEY PERTAIN TO MILL TAILINGS AND LOW LEVEL WASTE. NRC'S PRINCIPAL CONCERNS ARE WITH NONRADIOLOGICAL STANDARDS ISSUED IN RESPONSE TO UMTRCA AND THE SOLID WASTE DISPOSAL ACT, AS AMENDED (RESOURCE CONSERVATION AND RECOVERY ACT [RCRA]). TWO ADDITIONAL ISSUES ARE COVERED -- CLEAN AIR ACT AND SUPERFUND FOR TMI.

A. RCRA ISSUES

1. STATUTORY BASIS FOR APPLYING RCRA TO MILL TAILINGS AND LLW

NRC STAFF HAVE CONCLUDED THAT EPA WAS WITHIN ITS STATUTORY MANDATES IN APPLYING NONRADIOLOGICAL STANDARDS TO MILL TAILINGS AND LOW LEVEL WASTE BASED ON THE FOLLOWING:

A. FOR MILL TAILINGS: SECTION 84 OF AEA (UMTRCA)



B. SPECIFIC MILL TAILINGS ISSUES

1. RULEMAKING

NRC WAS UNABLE TO CONFORM THE MILL TAILING REGULATION TO THE EPA STANDARDS WITHIN ITS LEGISLATIVELY MANDATED TIMEFRAME (APRIL 1984). NRC STAFF PROPOSED A TWO STEP RULEMAKING TO MEET AT LEAST PART OF THE APRIL MANDATE AND TO PROVIDE A CLEAN-UP BASIS FOR FUEL CYCLE REMEDIAL ACTIONS. RULEMAKING TO CONFORM TO RCRA PORTION OF THE EPA MILL TAILINGS STANDARD WILL TAKE MUCH LONGER DUE TO TECHNICAL COMPLEXITIES. SOME OF

THE TECHNICAL ISSUES THAT MUST BE ADDRESSED IN THE RULEMAKING ARE:

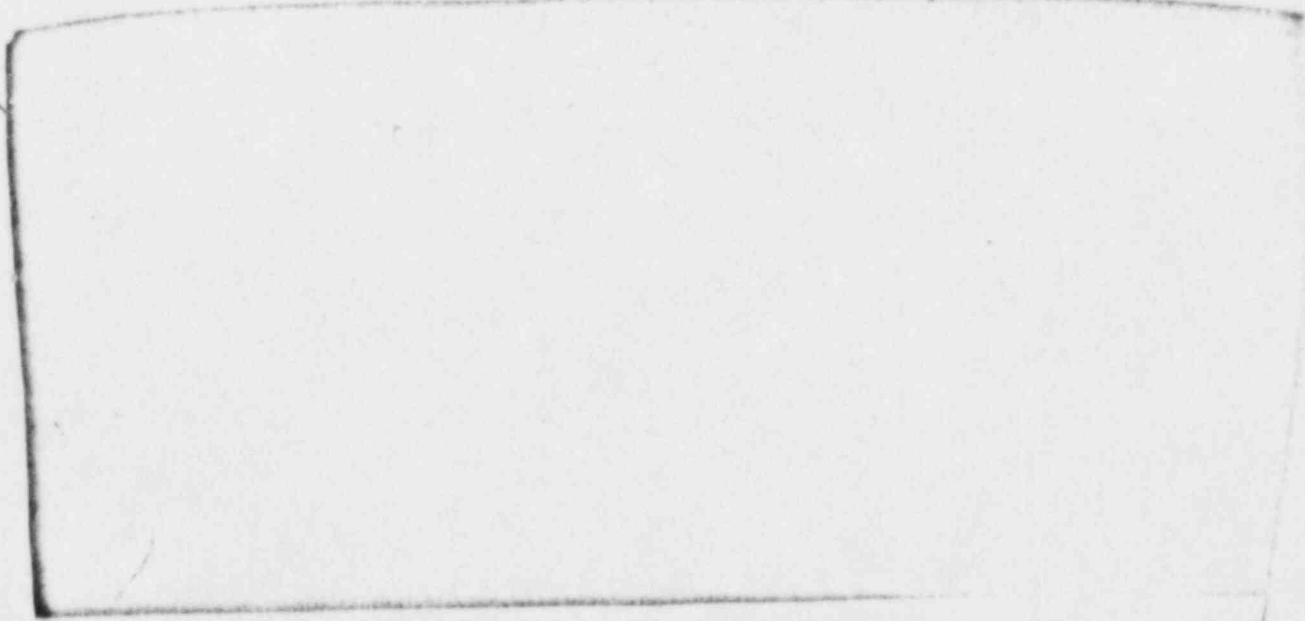
- A. MILL TAILINGS STANDARD INCORPORATED BY REFERENCE ENTIRE PORTIONS OF EPA'S RCRA REGULATIONS (PART 264) THAT AMONG OTHER REQUIREMENTS EFFECTIVELY SPECIFY "SYNTHETIC LINERS."
- B. NRC WOULD ESTABLISH A MONITORING PROGRAM TO DETERMINE THE NATURE AND EXTENT OF THE HAZARDOUS CONSTITUENTS IN MILL TAILINGS TO ESTABLISH A BASIS FOR OUR RULEMAKING. EPA WOULD PARTICIPATE IN THE DEVELOPMENT OF THE MONITORING PROGRAM AND THE ANALYSIS ^{OF} ~~IF~~ THE DATA TO FACILITATE THEIR CONCURRENCE ON OUR REGULATION AS REQUIRED UNDER UMRCA.

2. PROBLEMS WITH ENFORCING EPA STANDARD AT EXISTING SITES

- A. EPA'S SYNTHETIC LINERS MAY BE UNWARRANTED FOR EXISTING LICENSEES IN SOME SITUATIONS. NRC HAS NO DISCRETION.
- B. TECHNICAL PROBLEMS OF SYNTHETIC LINERS FOR EXTENSION OF THE "EXISTING PORTION" OF MILL SITES.
- C. NRC DOESN'T HAVE ANY LEEWAY REGARDING HAZARDOUS CONSTITUENTS OR THE EXTENT AND SCOPE OF MONITORING AT LICENSED SITES.

- D. SINCE EPA'S STANDARDS REQUIRE EPA'S CONNURRENCE ON THE ESTABLISHMENT OF ANY ALTERNATE CONCENTRATION LEVELS OR DELISTING OF HAZARDOUS CONSTITUENTS, THIS WOULD IMPACT ON NRC'S APPROVAL OF CLEAN-UP PROPOSALS BY MILLS OR OF MODIFIED MONITORING PROGRAMS.

3. RECOMMENDED COURSE OF ACTION

- A. BASED ON PERCEIVED POLITICAL CONSIDERATIONS WE SHOULD NOT PURSUE LEGISLATIVE CLARIFICATION AT THIS TIME.
- B. NRC SHOULD PROCEED WITH A TWO STEP RULEMAKING.
- C. NRC WOULD SEEK RELIEF FROM EPA'S IMPLEMENTATION DATE FOR GROUND WATER STANDARD:
- D. NRC AND EPA WOULD PURSUE TECHNICAL PROGRAM TO ASSESS NON-RADIOLOGICAL HAZARDOUS CONSTITUENTS IN MILL TAILINGS TO FORM THE BASIS FOR NRC RULEMAKING AND EPA STATUTORY CONCURRENCE.
- 

SUMMARY OF ISSUES FOR MEETING WITH EPA

THE ISSUES WHICH ARE CREATING INTERFACE PROBLEMS FOR EPA AND NRC CAN BE GROUPED INTO THREE MAJOR CATEGORIES: DUAL REGULATORY REQUIREMENTS; AGENCY JURISDICTIONAL ISSUES; AND SCHEDULING AND TIMING OF EPA STANDARDS AND NRC REGULATIONS. THE ATTACHED PAPERS DISCUSS HOW THESE ISSUES IMPACT ON THE MAIN SUBJECT AREAS REQUIRING EPA/NRC INTERFACE. THIS SUMMARY HIGHLIGHTS THE ISSUES DISCUSSED IN THESE PAPERS.

REGULATIONS

URANIUM RECOVERY ISSUES

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INCORPORATE RCRA STANDARDS FOR NON-RADIOACTIVE HAZARDOUS
WASTES BY REFERENCE.

