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MEMORANDUM FOR: Samuel J. Chilk, Secretary

FROM: T. A. Rehm
Assistant for Operations, EDO

SUBJECT: SECY-83-523/523A - PROPOSED AMENDMENTS TO URANIUM MILL
TAILINGS REGULATIONS AND ADVANCE NOTICE OF PROPOSED
RULEMAKING - POLICY STATEMENT

SECY (A. Bates) requested that this information on the Policy statement be provided separately from the Rulemaking package. That package includes the identical wording of the Policy statement in both the Rule and the AWPR.

By memorandum dated July 10, 1984, Samuel J. Chilk informed William J. Dircks of the course of action the Commission has approved for proposed amendments to the uranium mill tailings regulations. Item 1. of the memorandum requested that the final wording of the Implementation and Enforcement Policy insert be forwarded to the Commission for approval.

Enclosure 1 is the proposed final wording of the Implementation and Enforcement Policy insert. The pen and ink edited copy of Commissioner Asselstine's comments in Enclosure 2 shows the changes made before adding the comments as an insert to the Policy statement.

The Policy insert has been incorporated in both the proposed rule and advance notices as indicated in Item 2. The notices, Congressional letters, and press release are being forwarded to the Offices of the Secretary and Congressional Affairs in parallel following the usual procedures. Licensees will be informed after Commission approval as indicated in Item 4.

For your information, a sample revised Congressional letter and modified draft public announcement are also enclosed.

(Signed) T. A. Rehm

T. A. Rehm
Assistant for Operations, EDO

Enclosures:

1. Policy statement
2. Edited comments
3. Sample Congressional letter
4. Draft public announcement

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REVISED PER EDO (REHM) 7/25/84
*SEE PREVIOUS ORC FOR CONCURRENCES

| OFC | WMLU* | WMLU | WM | WM | NMSS | NMSS | AO/EDO |
|------|-----------------|---------------|-----------|---------------|--------------|-----------|-----------|
| NAME | :KDragonette;pv | LHigginbotham | MJBell | : REBrowning; | DMAusshardt; | JDavis | : TAREhm |
| DATE | :7/ 11 /84 | : 7/12/84 | : 7/18/84 | : 7/18/84 | : 7/18/84 | : 7/23/84 | : 7/25/84 |

POLICY STATEMENT

Enclosure 1

~~Regulations, Part 440, Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory, as codified on January 1, 1983."~~

~~Reason: These new paragraphs incorporate EPA requirements imposed under 40 CFR 192.41(d) and 40 CFR 192.32(a)(3), respectively.~~

~~8. Criteria 2, 7, 9, 10, 11, and 12 are not affected by the new EPA standards or editorial changes and no modification is proposed for any portion of those criteria.~~

Implementation and Enforcement Policy

The Commission considered the question of whether the EPA mill tailings standard exceeds EPA's jurisdiction. A reasonable argument can be made that the Congress did not intend that EPA develop the type of standard contained in 40 CFR 192. The legislative history of the provision when it was first adopted by the Senate Environment and Public Works Committee indicates an intent that EPA establish a general environmental standard for both radiological and nonradiological hazards. This legislative history indicates that EPA was not to establish such elements as cover requirements or liner requirements as part of its standard. However, the legislative history is contradictory in that some other statements indicate a Congressional intent that the EPA standard include such requirements.

Given these conflicting statements in the legislative history, the Commission next considered the question of whether the EPA standard constitutes a reasonable approach for mill tailings disposal. The Commission concluded that the EPA standard is a reasonable approach in the

circumstances. Unlike a power reactor or other operating facility, a mill tailings disposal site does not necessarily have a fixed and permanent site boundary which is maintained for the length of time a potential hazard exists. Rather, the emphasis is on stabilization of the pile in a manner that will assure long-term protection after institutional controls such as fences and guards are gone. In such circumstances, on-site and off-site distinctions appear to make little sense, and it is difficult to argue that the types of requirements adopted by EPA, including radon emanation limits, ground water limits and ground water control measures, are legally impermissible. The Commission has therefore decided not to question EPA's jurisdiction to adopt the types of requirements contained in 40 CFR 192, even though there is some basis for concluding that this may not have been what Congress had in mind.

However, the Commission has concluded that one aspect of EPA's standard clearly exceeds EPA's jurisdiction. That aspect is the requirement for EPA concurrence in NRC case-by-case determinations of alternate concentration limits and delisting of hazardous constituents. In essence, the EPA position establishes a system of dual regulation that clearly was not intended by the Congress. Section 84c of the Atomic Energy Act, in the Commission's view, gives the NRC exclusive authority to approve site specific alternatives proposed by licensees to the EPA standard based upon a practicability determination. The Commission plans to assert its exclusive jurisdiction in this area and does not intend to seek EPA concurrence on these case-by-case determinations.

To the extent that it is determined that EPA has acted within its jurisdiction, the Commission believes that both the NRC and the Agreement States are legally obligated under Section 275d of the Atomic Energy Act

to implement and enforce the EPA standards for uranium and thorium mill tailings in 40 CFR 192, Subparts D and E. Since the effective date specified in the EPA standard was December 6, 1983, the Commission believes that the legal obligation for NRC and Agreement states includes enforcement in the interim while conforming and implementing rule changes are made.

Further, Section 84c of the Atomic Energy Act states that:

"A Licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with Section 275."

Thus, Commission licensees are expected to: (1) be in compliance with the EPA standards in 40 CFR 192 or, (2) be working toward compliance, or (3) submit proposed alternatives for Commission review in compliance

with dates established in 40 CFR 192. The Commission believes that licensee proposals for alternatives can be an important and effective way to help deal with the problems associated with implementing the new EPA standards. NRC's current regulations lack necessary implementation features called for in the preamble to the EPA standards and contain provisions in conflict or inconsistent with the EPA standards. NRC is under congressional mandate to modify its rules to conform to EPA's standards and develop general requirements comparable, to the maximum extent practicable, to requirements applicable to similar hazardous materials regulated by EPA under the Solid Waste Disposal Act, as amended. The Commission expects that it may require several years to fully meet this dual mandate and expects to use the flexibility provided by Section 84 in the interim to consider and approve alternative proposals from licensees. Section 84c provides NRC sufficient authority to independently approve alternatives so long as the Commission can make the required determination.

Impact of the Proposed Amendments

The Commission's action in proposing these modifications to its regulations in Appendix A to 10 CFR Part 40 is to conform them to the new EPA standards. These changes are for the purpose of avoiding conflicts and inconsistencies, and for clarifying previously existing language so as to be compatible with the new requirements. The action proposed here by the Commission is a consequence of previous actions taken by the Congress and the EPA, and is legally mandated in Section 275b(3) of the Atomic Energy Act of 1954, as amended.

EDITED COMMENTS

OF COMMISSIONER ASSELSTINE

Enclosure 2

SAMPLE CONGRESSIONAL LETTER

Enclosure 3

The Honorable Alan Simpson, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) is proposing amendments to the Commission's rules in 10 CFR Part 40 for licensing uranium mills and disposal of mill tailings and waste. The NRC is also issuing an advance notice of proposed rulemaking on further amendments to 10 CFR Part 40.

The NRC Authorization Act for FY 1983 (Public Law 97-415, signed January 4, 1983) contained a requirement that the Commission modify its mill tailings regulations to conform to final Environmental Protection Agency (EPA) standards for these materials. Final standards were signed by the Administrator September 30, 1983 and published on October 7, 1983 (48 FR 95928).

The enclosed proposed amendments and advance notice reflect the two rulemakings the NRC is undertaking to modify its rules to make them consistent with the new EPA standards and satisfy provisions of Section 205 of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The proposed amendments to Appendix A consist of changes to the existing Commission regulations necessary to conform to the new EPA standards and to incorporate within Commission regulations those provisions of the EPA standards not related to ground water. Minor conforming amendments to Appendix A, as necessary to remove inconsistencies with the ground water protection provisions of EPA's new standards, are included as proposed amendments. The advance notice outlines the NRC's plans for a further rulemaking to consider the incorporation within NRC regulations of these and other EPA ground water protection requirements issued by the EPA pursuant to provisions of the Solid Waste Disposal Act, as amended.

The enclosed notices are being sent to the Office of the Federal Register for publication. A copy of a public announcement to be released by the NRC on this matter is also enclosed.

Sincerely,

John G. Davis, Director
Office of Nuclear Material Safety
Safeguards

Enclosures:

1. FR Notice on proposed amendments
2. FR Notice on advance notice of proposed rulemaking
3. Public Announcement

cc: Senator Gary Hart

DRAFT PUBLIC ANNOUNCEMENT

Enclosure 4

NRC CONSIDERS CHANGES TO REGULATIONS
ON URANIUM MILL TAILINGS

The Nuclear Regulatory Commission is considering changing its regulations governing the disposal of uranium mill tailings to make them conform to rules recently issued by the Environmental Protection Agency and to achieve comparability with EPA groundwater protection requirements for other hazardous wastes.

The NRC Authorization Act for 1982 and 1983 requires the agency to bring its regulations into conformity with EPA's final standards for the protection of the public health, safety and the environment from hazards associated with uranium mill tailings, with prior notice and opportunity for public comment.

Under the proposed changes, the NRC's requirement for a minimum of three meters of cover over mill tailings to prevent dispersal of radon would be replaced by EPA's standards for longevity and radon control. Specifically, the new NRC rules would require that when uranium mill tailings and waste disposal areas are closed, the design must provide reasonable assurance of control of radiological hazards for one thousand years, to the extent reasonably achievable, and in any case for at least 200 years. The design must also provide reasonable assurance that releases of radon from the tailings to the atmosphere will not exceed an average of 20 picocuries per square meter per second.

To conform to EPA's maximum radiation dose provisions, the proposed NRC rules state that, during operation of a uranium mill, the annual radiation dose to any member of the public as a result of planned discharges of radioactive material should not exceed 25 millirems per years.

Other proposed revisions of NRC's regulations to achieve conformity with EPA's final rules are contained in a Federal Register notice published on _____ . In addition, the Commission is considering a second set of changes to its uranium mill regulations to incorporate groundwater protection standards and other requirements established by the EPA. The Uranium Mill Tailings Radiation Control Act of 1978 requires the NRC to establish regulatory requirements for mill tailings that are comparable, to the extent practicable, to requirements for similar hazardous material regulated by EPA under the Solid Waste Disposal Act.

The Commission is issuing an "Advance Notice of Proposed Rulemaking" to seek public views before formally proposing this second set of changes, which will require EPA concurrence before adoption in final form.

Examples of areas of EPA's groundwater protection regulations that NRC must address include the design, construction, and installation of liners to prevent seepage out of surface impoundments; groundwater monitoring and response programs to detect seepage if it occurs; and corrective action programs to restore baseline water quality. Specific issues on which the Commission seeks public input are described in a Federal Register notice published on _____.

However, the Commission has concluded that one aspect of EPA's standard clearly exceeds EPA's jurisdiction. That aspect is the requirement for EPA concurrence in NRC case-by-case determinations of alternate concentration limits and delisting of hazardous constituents. In essence, the EPA position establishes a system of dual regulation that clearly was not intended by the Congress. The Atomic Energy Act, in the Commission's view, gives the NRC exclusive authority to approve licensee proposed site-specific alternatives to the EPA standard, based on a practicability determination. The Commission plans to assert its exclusive jurisdiction in this area and does not intend to seek EPA concurrence on these case-by-case determinations.

Interested persons are invited to submit written comments on the proposed rule (by _____) and the advance notice of proposed rulemaking (by _____). The comments should be directed to the Secretary, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch.