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(57 FR 48749)

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## URANIUM PRODUCERS OF AMERICA

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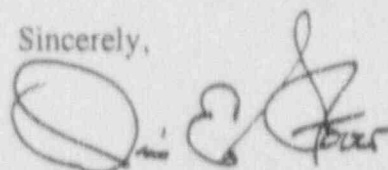
The Secretary of the Commission  
Attention: Docketing and Service Branch  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Advance Notice of Proposed Rulemaking 10 CFR §40  
Request for Public Comment  
Federal Register Volume 57, Page 48749, October 28, 1992

Dear Sir or Madam:

The Uranium Producers of America (UPA) submits the attached comments regarding the proposed ANPR (Advanced Notice of Proposed Rulemaking) as published in the Federal Register, Volume 57, No. 209, 48749 (October 28, 1992).

Sincerely,



Dennis E. Stover for  
Robert P. Luke  
Committee Chair  
Technical/Regulatory Affairs Comm.  
Uranium Producers of America

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URANIUM PRODUCERS OF AMERICA  
Comments on the  
Advance Notice of Proposed Rulemaking  
for 10 CFR §40

The Uranium Producers of America (UPA) is an association of domestic uranium mining companies. Its purpose is to promote governmental policies, regulations, and legislation which provide a balance between the economic, environmental, and occupational safety concerns within the domestic uranium mining industry. UPA member companies hold numerous source material licenses for uranium milling and processing facilities in several western states (New Mexico, Texas, Utah, Wyoming, etc.).

On 28 October 1992, the United States Nuclear Regulatory Commission (NRC) published an Advance Notice of Proposed Rulemaking (ANPR) and a request for comment regarding possible amendments to 10 CFR §40. The following comments are offered by the UPA on behalf of its member companies and may supplement comments provided directly by individual member companies. The comments which follow are organized into the four major elements identified in the Federal Register Notice.

Exemptions:

Proposals in this area including options listed in NUREG/CR-5881 will increase the paperwork and administration costs for the affected licensees and the Commission. UPA concerns are: (1) that any resulting changes be subject to the provisions of the "Paperwork Reduction Act of 1980"; (2) that costs associated with new regulations be borne solely by the exempted and general licensees affected by such new regulations. Existing licensees who are already subject to specific licensing requirements should not be financially liable for these added costs; and (3) that the exemption from the source material designation for materials under the 0.05% weight concentration as described in §40.13(a) be preserved.

As the NRC is well aware, the 0.05% exemption has long been part of the 10 CFR §40 regulations and has served an important function in limiting materials that NRC is required to oversee to materials that are directly associated with the nuclear fuel cycle and/or that could pose a health and safety hazard.

The 0.05% exemption also serves the public interest in that it allows NRC to avoid intrusion into a variety of common activities which are integral to society and pose no significant health and safety hazards to the public. If (for example, the 0.05% exemption is removed, the source material licensing requirement or other NRC regulations could be applicable for routine excavation and construction activities in domestic areas where native soils contain measurable concentrations of uranium and thorium albeit below the present 0.05% limit. Further, neither

the ANPR nor the NUREG supporting the ANPR contain any information regarding specific health hazards or concerns which would justify a reconsideration of the 0.05% exemption.

Under the Atomic Energy Act (AEA), the jurisdiction of the NRC has been directed to only those activities that arise directly from use and production of nuclear fuel and energy. The UPA fully supports a continuation of this historical limitation.

The UPA agrees with NRC that "the ramifications of any contemplated changes to [the 0.05%] exemption need to be carefully considered so as to avoid drawing NRC into unnecessarily regulating ore processing operations and other activities which involve low concentrations of source material". (NUREG/CR 5581 at 2)

#### General Licenses:

UPA concerns regarding General License issues are similar to those previously listed for Exemptions. Clearly, the potential new regulations will add to the Commission's costs. These added costs should be borne solely by the exempted and general licensees subject to these new regulations. Existing licensees already subject to specific licensing requirements should not be financially responsible for these added commission costs.

The NRC is now required to recover 100% of its operating budget through fees. Existing licensees have no control over NRC decisions to undertake regulatory tasks at their expense and to use funds procured through the assessment of annual fees. As a result, existing licensees are constrained to provide funding for the NRC efforts to develop new and expanded regulations. The UPA, as a representative of existing licensees, believes that the NRC should limit and narrow these development efforts to consume the minimum NRC resources and time. Regardless of the efforts expended in the area of General Licenses, UPA believes that existing Specific Licenses should not be financially responsible for the cost of proposing and implementing changes in the area of General Licenses.

#### Specific Licenses (other than mills and tailings):

For specific licenses other than those source material licenses associated with the mining and processing of uranium ores and related (byproduct) material, the UPA has no comments.

#### Specific Licenses - Mills and Mill Tailings:

The NRC lists six issues regarding uranium mills and mill tailings: 1) use of non-natural feed material in uranium mills; 2) disposal of non-11e(2) byproduct material in tailings piles; 3) conformance of 10 CFR §40, Appendix A with EPA radionuclide standards; 4) licensing of a commercial 11(e)(2) disposal facility at a site without a mill; 5) disposal of wastes from in-situ

uranium extraction operations; and 6) Appendix A conformance with EPA groundwater protection standards. This area and the six particular issues are of special concern to UPA member companies, all of whom are involved in the uranium mining and milling/processing industry. Members hold specific licenses under 10 CFR §40 and own either conventional mines/mills or ISL mining/processing facilities.

Issue 1 relates to the use of non-natural feed material in uranium mills. As noted in the ANPR, this issue is presently addressed by NRC staff and regulatory positions. The UPA does not believe that this issue requires specific attention as a matter for NRC rule making.

Issue 2 relates to disposal of non-11e(2) byproduct material in tailings piles. The key factor in this issue is the classification of the non-11e(2) byproduct material as non-hazardous and non-toxic material for purposes of the EPA hazardous and toxic material regulations. This distinction assists in allowing tailings facilities to be operated and ultimately closed under NRC regulations specific for this type of material. Application of EPA regulations for hazardous and toxic materials to these materials and facilities would be inappropriate. The UPA believes that any revisions or new NRC regulations must preserve and protect the exemption of tailings sites from EPA hazardous and toxic material regulations.

The regulations should be revised, however, to increase the latitude as to what materials may be placed into mill tailings facilities. The large quantities of domestic NORM and other low activity, high volume wastes could efficiently be disposed into these facilities. Agreements between state agencies, the NRC, and other federal agencies through Memoranda of Understandings (MOU) would facilitate this expanded use of existing disposal sites.

Issue 3 concerns amendments to 10 CFR §40, Appendix A to conform to EPA proposed amendments to 40 CFR §192(Subpart D). The UPA supports minor amendments to 10 CFR §40 to clarify and streamline regulatory oversight consistent with the 25 October 1991 MOU between NRC and EPA. UPA also supports the NRC and EPA efforts to proceed with rulemaking concerning the 40 CFR §61, Subpart T regulations to achieve sole regulatory responsibility for Subpart T tailing sites by the NRC and its agreement states.

The UPA further supports consideration of rulemaking for 10 CFR §40 which establishes groundwater regulations similar to the EPA proposal for Title I uranium mill tailing sites under the Uranium Mill Tailings Radiation Control Act of 1978 (52 FR 36000; 24 September 1987). This rulemaking should include use of passive restoration for groundwater remediation. The UPA believes that groundwater reclamation standards for Title I and Title II sites should be consistent.

Issue 4 concerns the licensing of commercial byproduct disposal sites. As a representative of both conventional mining/milling and ISL operating companies, the UPA supports the continuing use of existing mill tailings facilities for the disposal of byproduct materials. To the extent that these facilities have adequate capacity to receive such material, the NRC should encourage this disposal method in preference to new commercial disposal sites



located remotely from uranium mines and processing facilities. This policy would be totally consistent with the NRC policy of non-proliferation of disposal sites. Key additional concerns regarding byproduct disposal sites such as liability, financial assurance, long term care and monitoring, and final ownership are already resolved or approved for these existing mill tailings facilities.

Any authorization for construction of new byproduct disposal sites must address all these concerns plus questions regarding expertise and track record of the proposed site operator. These added tasks should not be undertaken until there is a clear need for more disposal capacity demonstrated by those who generate the byproduct materials. The basis for this need should be both economic and available disposal capacity. Any such regulation must be drafted to ensure that it does not result in a single remote third party commercial site which could operate with monopolistic disposal fees.

Given the list of finance, ownership, and expertise concerns surrounding licensing of new byproduct disposal sites and the ongoing development of in-situ mines, the UPA believes that new byproduct disposal facilities should be approved and sited at ISL uranium operations or adjacent to existing mill tailings impoundments. In these situations issues relating to financial assurance, liability, long term care and maintenance, and final ownership are already defined.

Issue 5 concerns disposal of waste from in-situ leaching operations. The UPA and its members generally support the NRC policy regarding non-proliferation of small waste sites. However, as outlined in the comments relating to Issue 4, the UPA and its members are concerned about the possible NRC requirement that future mining wastes (in-situ leaching wastes in particular) be disposed at a single, remote commercial disposal site operating under a monopolistic pricing structure.

Such a NRC mandated disposal scheme could place the domestic uranium mining industry at a major cost disadvantage to foreign mines. The UPA recommends that the "Staff Guidance on Disposal of In Situ Wastes" be modified to expressly provide for reasonable justification of on site disposal and prevent occurrence of such a monopolistic waste disposal situation.

The UPA further recommends that this guidance document also be modified to expand and alter the criteria for consideration of on site disposal at uranium in-situ leaching facilities. The availability or lack thereof of off site disposal sites is an insufficient criterion for consideration of permanent on site disposal. Broader, more flexible criteria based on cost-benefit analyses are needed. Such criteria should include costs and risks associated with owner liability, long term care and maintenance, logistics including waste transport, financial assurance, and operator expertise.

Issue 6 concerns the NRC obligations under the Atomic Energy Act (AEA) to ensure that its mill tailings requirements are comparable to EPA requirements for similar wastes under the Solid Waste Disposal Act (SWDA).

The UPA believes that no additional rulemaking by NRC is necessary to conform to EPA SWDA requirements. AEA Section 84 does not expressly require NRC comparability with EPA through rulemaking. Comparability can be demonstrated through a combination of policy, regulation, guidance, and specific license conditions.

More importantly, strict conformance of NRC regulations to EPA standards may not be possible nor desirable because of significantly different regulatory constraints for the different types of sites.

### CONCLUSION

The UPA and its member companies support NRC efforts to streamline and improve the regulatory process. The ANPR can be the beginning of an initiative which results in an enhanced regulatory environment for uranium miners where costs and benefits of NRC actions are better aligned with the needs of the industry. With this objective in mind, the UPA appreciates the opportunity to comment on the proposed rulemaking.

While UPA recognizes that some changes to 10 CFR §40 are necessary and appropriate, the need for major revisions has not been adequately supported. Any NRC proposal for final rulemaking should be based on specific concerns which are well documented and within the well defined mission of the NRC as set forth in the Atomic Energy Act. UPA believes that if the NRC adheres to this methodology the resulting proposals will be narrower in scope than suggested in this ANPR and will result in more efficient regulation of our industry.

The UPA and its member companies are available to assist in the rulemaking process in any manner deemed appropriate by the NRC.