RULEMAKING ISSUE

(NEGATIVE CONSENT)

December 17, 1996 SECY-96-254

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: RULEMAKING PLAN FOR REVOKING THE REQUIREMENT FOR AN ENVIRONMENTAL REPORT FROM URANIUM MILLING LICENSEES AT LICENSE TERMINATION - 10 CFR 51.60

PURPOSE:

To inform the Commission of the staff's rulemaking plan for amending 10 CFR 51.60 by deleting the requirement for an environmental report at license termination for uranium mills.

BACKGROUND:

In July of 1996 the Office of Nuclear Material Safety and Safeguards requested that the Office of Nuclear Regulatory Research initiate a rulemaking to eliminate an unnecessary requirement for an environmental report required by 10 CFR 51.60 (b)(3). The requirement is unique in that there is no such requirement at license termination for any other nuclear facility.

DISCUSSION:

The staff was unable to establish a precise logic and reason for the requirement. Eliminating it will not adversely affect the health and safety of the public, or the quality of the environment. Also the quality of the information available to NRC and public participation will be unaffected by the removal of this requirement.

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NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

As a result, the attached rulemaking plan was prepared by the Office of Nuclear Regulatory Research and results in revoking 10 CFR 51.60(b)(3).

COORDINATION:

The Office of the General Counsel has no legal objection to the Rulemaking Plan.

RECOMMENDATION:

I intend to proceed with the development of the rule as described in the attached Rulemaking Plan unless otherwise directed by the Commission within 10 days from the date of this paper.

James M. Taylor
Executive Director
for Operations

Attachment:
Rulemaking Plan

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Monday, January 6, 1997 that the Commission, by negative consent, assents to the action proposed in this paper.

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RULEMAKING PLAN FOR AMENDING THE REQUIREMENTS
FOR ENVIRONMENTAL REPORTS FROM URANIUM RECOVERY FACILITIES
AT LICENSE TERMINATION

Lead Office: Office of Nuclear Regulatory Research

Staff Contact: Joseph J. Mate

Concurrences:

J. Murphy for Morrison 09/27/96
D. L. Morrison, RES Date

By memorandum 10/18/96
C. Paperiello, NMSS Date

E-Mail frm. Sollenberger 10/21/96
R. Bangart, OSP Date

E-Mail frm. Fonner 11/18/96
S. Treby, OGC Date

12/17/96
J. Taylor, EDO Date

Attachment

RULEMAKING PLAN FOR AMENDING THE REQUIREMENTS FOR ENVIRONMENTAL REPORTS FROM URANIUM RECOVERY FACILITIES AT LICENSE TERMINATION

Regulatory Issue

In accordance with 10 CFR 51.60(b)(3), an applicant for termination of a license for the possession and use of source material for uranium milling is required to prepare and submit with its application to the Director of Nuclear Material Safety and Safeguards an "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The contents of this Environmental Report are specified by 10 CFR 51.45.

The requirement in 10 CFR 51.60(b)(3) is considered unnecessary by the staff. Applicants for a license to receive, possess, and use source material for uranium or thorium milling are required to satisfy detailed standards established by 10 CFR 40.31, 10 CFR 51.60, and Appendix A to Part 40. Decommissioning/reclamation of mills is governed by the requirements and technical criteria of 10 CFR 40.42, Appendix A, and EPA regulations under 40 CFR Part 192. Under 10 CFR 51.60, an environmental report must be prepared and submitted in support of a license application for possession and use of source material for uranium milling or production of uranium hexafluoride pursuant to Part 40. In addition, an environmental report or supplement to a previous environmental report must be submitted for an amendment to or renewal of a license or other form of permission. Therefore, a licensee will have submitted several environmental reports prior to license issuance and throughout the course of the licensed activities.

The requirement in 10 CFR 51.60(b)(3) also is outdated with respect to current decommissioning requirements and processes, which call for a licensee to submit environmental reports throughout the process leading up to license termination. The licensee must submit license amendment applications to undertake site reclamation and decommissioning activities that must be completed before the license may be terminated, such as decommissioning the mill, reclaiming the tailings, and remediating groundwater contamination. Such applications are required to be accompanied by an environmental report or supplement. Prior to approval of each such license amendment application, and placement of a condition in the license requiring the decommissioning and reclamation actions, the staff will (1) conduct a safety and environmental review, to ensure that the proposed actions meet the EPA requirements in 40 CFR Part 192 and the NRC requirements in 10 CFR Part 40, and (2) issue a Technical Evaluation Report (TER) and an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). Following completion of the reclamation and decommissioning activities, the licensee must submit another license amendment application, accompanied by the necessary reports, requesting removal of the license conditions requiring the work. The staff will review the application and issue a TER and an EIS or EA. Prior to license termination, the licensee also must comply with site and byproduct material ownership provisions, which require ownership of byproduct material and land (including any interests connected to the land essential to ensure the long

term stability of the disposal site) to be transferred to the United States Government or to the State in which the land is located. This sequence of activities will require a number of years to complete, and will occur before the licensee can request termination of its license. The staff expects the only conditions that will remain in the license at the time the licensee requests termination of the license are the conditions specifying the groundwater monitoring that the licensee must be performing under Criterion 7 of Appendix A. Because of the length of time involved in preparing to terminate a uranium mill license, and the process of conducting several environmental reviews throughout the process (note: each review involves public participation), the staff considers an Environmental Report at license termination to be a useless and unnecessary reporting requirement.

Existing Regulatory Framework

Part 51 addresses environmental protection requirements applicable to NRC's domestic licensing and regulatory functions, and establishes procedures for compliance with the National Environmental Policy Act (NEPA). Section 51.60 pertains to Environmental Reports by materials licensees. It provides in 51.60(a) that license applicants or licensees under 10 CFR Part 40, as well as other Parts, seeking approval for a specified list of actions, must file an "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report." The actions specified in 10 CFR 51.60(b) include "(3) Termination of a license for the possession and use of source material for uranium mining."

The contents of an Environmental Report are specified in 10 CFR 51.45. They include the following "environmental considerations":

(1) Impact of the proposed action on the environment.
(2) Any adverse environmental effects that cannot be avoided should the proposal be implemented.
(3) Alternatives to the proposed action.
(4) Relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.
(5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

The report is required to be a quantitative analysis, to the extent possible. It is required to list all Federal permits, licenses, approvals, and other entitlements that must be obtained and to describe the status of compliance with applicable environmental quality standards and requirements. The discussion of alternatives must address the compliance of the alternatives with such standards.

Part 51 of 10 CFR was first proposed by the Atomic Energy Commission (AEC) on November 1, 1973 (38 FR 30203), and was adopted as a final rule on July 18, 1974. The rule placed all of the policies and procedures implementing NEPA with respect to licensing and regulation of production and utilization facilities and nuclear materials in the new Part 51. The rulemaking responded to the new guidance on NEPA implementation adopted by the Council on Environmental Quality (CEQ) in August 1973.

Subpart B of the original Part 51 dealt with Environmental Reports from facilities, but it covered only Environmental Reports at the construction permit stage (§ 51.20) and at the operating license stage (§ 51.21). Subpart A of the rule, which discussed the general requirements for environmental impact statements, listed "Termination of a license for the possession and use of source material for uranium milling at the request of the licensee" as an action that might require the preparation of an EIS, "depending on the circumstances" (§ 51.5(b)(8)). The rule stated that the AEC would rely on the Guidelines prepared by the CEQ in deciding on whether an EIS would be required. The rule also stated that the AEC could require "applicants for permits, licenses, and orders, and amendments thereto, and renewals thereof" whose actions might require preparation of an EIS "to submit such information to the Commission as may be useful in aiding the Commission in the preparation of an environmental impact appraisal" (§ 51.5(c)(3)).

As promulgated in 1974, 10 CFR Part 51 did not contain § 51.60 or any equivalent. The rule required, at most, that the AEC consider whether, under the circumstances of a particular facility, it should prepare an EIS or environmental appraisal at license termination, and gave the AEC the authority to obtain necessary information from the licensee.

CEQ promulgated revised regulations implementing NEPA in November 1978 (43 FR 55990, November 28, 1978). The NRC, which had succeeded the AEC in January 1975, and which had retained 10 CFR Part 51 as part of its regulations, evaluated the CEQ revisions and issued its own proposed revisions to 10 CFR Part 51 on March 3, 1980. Those regulations contained several sections on Environmental Reports, including a specification of their contents (§ 51.45), and detailed requirements for different categories of licensees. Section 51.60, which was added in the 1980 proposal, stated the following:

> § 51.60 Environmental Report-materials licensees
>
> Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 40, and/or 70 of this chapter, covered by paragraphs (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), or (b)(12) of § 51.20, or (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), or (b)(10) of § 51.21 shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.61, of a separate document, entitled "Applicant's Environmental Report." The "Applicant's Environmental Report" shall contain the information specified in § 51.45.

Section 51.21, which described the actions for which an environmental assessment was required, contained "termination of a license for the possession and use of source material for uranium milling," in subsection(b)(9). Thus, in 1980, the proposed § 51.60 created the requirement for submission of an Environmental Report as part of the application for license termination. The preamble to the proposed rule, however, did not explain why subsection (b)(9) had been included in § 51.21, or why subsection

(b)(9) had been included in the list in § 51.60. In addition, nothing in the rules promulgated by the CEQ in 1978 appears to mandate the 10 CFR 51.60(b)(3) requirement.

The final rules under Part 51 were promulgated on March 12, 1984 (49 FR 9352). Although 10 CFR 51.60 was revised to its current form and contents in this final rulemaking, its requirement with respect to submission of an Environmental Report for license termination of a uranium mill continued to be included. The preamble to the final rule did not provide a discussion of the reason for including this requirement. OGC observed that in 1974, the reporting requirement was significant in the context of NEPA. In 1974, few if any uranium mills had been subject to a full NEPA review, and there were no statutory or codified rules relevant to the closure of mill tailings sites and ground water remediation. At that time termination of a mill license could have resulted in significant environmental impact.

The staff's research of the Statement of Consideration for 10 CFR Part 51 was unable to find a specific justification for the requirement or an explanation of the purpose behind 10 CFR 51.60(b)(3). Hence eliminating (b)(3) would not defeat a purpose that may not be defined in the regulation.

How the Regulatory Problem Will be Addressed by Rulemaking

The requirement in 10 CFR 51.60(b)(3) has been in the regulations for over 20 years. It is unique, in that there is no such requirement at license termination for any other type of nuclear facilities licensees. Because only one uranium mill license has been terminated to date (Edgemont), there is limited experience with the impact of the provision. In the Edgemont case, the requirement under 10 CFR 51.60(b)(3) was met with little additional effort on the part of the licensee and the NRC staff. However, in the next decade, a number of uranium mills are expected to seek license termination. It is not possible to predict at this point whether the Edgemont experience will be repeated closely. The staff believes that the requirement is unnecessary, since it has been superseded by the current multi-step application, reporting, and staff review and approval process leading to license termination, as outlined above. Elimination of 10 CFR 51.60(b)(3) would not affect the remaining requirements in 10 CFR 51.60, nor would changes be necessary to 10 CFR Part 40 or to Appendix A to Part 40. The rulemaking would eliminate an unnecessary reporting requirement.

Preliminary Regulatory Analysis

Uranium production is carried out through "conventional" production facilities, which are mills using either acid or carbonate leaching, and "nonconventional" or in situ plants, which use underground injection of leaching solution. In 1995, 26 conventional mill sites and 17 nonconventional plants were identified in the United States by the Department of Energy (DOE). NRC also regulates the U.S. Energy GMIX (ion exchange) facility and the EFN Reno Creek facility (a resin storage site) under 10 CFR Part 40, and very recently transferred control of the Edgemont site to DOE. Nineteen facilities are found in four Agreement States: Texas, Colorado, Illinois and Washington.

NRC directly regulates 25 facilities (19 mills or related facilities and 6 in situ plants).

Decommissioning and reclamation of conventional facilities involve decommissioning and dismantling of the mill, tailings reclamation, and groundwater restoration; decommissioning of a nonconventional plant involves plant dismantling, wellfield restoration, and groundwater restoration. These activities are carried out according to plans and cost estimates submitted to and approved by NRC or Agreement States. For sites where tailings remain, decommissioning and reclamation are followed by transfer of ownership of the site to the United States Government or the State where the site is located, who assume responsibility for long-term surveillance of the site. These actions must be completed before the NRC license may be terminated. A number of conventional facilities currently are in the process of decommissioning and reclamation. Several licensees have dismantled their mills and are engaged in reclamation of tailings and/or groundwater restoration. Some nonconventional facilities, which typically decommission portions of their wellfields while retaining other portions in production, also are decommissioning.

NRC staff estimate that over the next decade as many as 12 conventional facilities will complete decommissioning. Five mills are expected to complete decommissioning within the next five years, and one of them is expected to complete decommissioning in the relatively near future.

NRC has had limited experience with termination of licenses for uranium milling facilities and the preparation of (b)(3) type environmental reports. To date, only one facility, Edgemont, has reached the point of license termination. Edgemont ceased operation in the early 1970's, and the original mill and tailings site was decommissioned. The licensee, the Tennessee Valley Authority, conducted cleanup activities at the site from 1984 to 1989, carried out groundwater monitoring from 1986 to 1996, and submitted semiannual reports to NRC. NRC conducted its review and prepared a Completion Review Report, determining that reclamation and decommissioning had been acceptably completed, in December 1995, and in January 1996 notified the TVA of its approval of completion of the site reclamation and decommissioning. TVA then applied to terminate its license and transfer ownership of the site to DOE. In support, TVA submitted a three-page Environmental Report Supplement on April 30, 1996, which summarized the steps that had been taken with respect to reclamation, decommissioning, and monitoring. This report provided a short background concerning the site; referenced the Decommissioning Plan Environmental Report submitted to NRC in February 1979 and approved by NRC in June of 1982; and summarized groundwater monitoring and reclamation activities at the mill site and tailings disposal site associated with the facility. The Environmental Report Supplement also referenced the NRC's Completion Review Report, and provided a short concluding paragraph noting that there are no apparent environmental problems at the site, the environmental radiological conditions were being met, and no significant environmental changes have occurred since completion of decommissioning. On June 27, 1996, NRC terminated TVA's license and placed the site under the custody and long-term care of DOE.

As a means of solving this problem, NRC considered the preparation of a Standard Format and Content Guide for Environmental Reports supporting license termination. The staff believes that very little could be required in such a Guide, because at the time of license termination all of the significant environmental issues will have already been addressed by the series of reports and staff decisions that make up the decommissioning and reclamation process. Although one approach to resolving the regulatory problem could be to develop a format and content guide that would enable the Edgemont case to be replicated for other licensees, the staff feels that a more direct resolution to the problem is elimination of the unnecessary rule.

Assumptions

The costs and benefits of the proposed regulatory amendment were calculated based on the following assumptions:

- If an Environmental Report supporting license termination is created from information supplied in reports previously submitted by the licensee, then the cost to the licensee would arise from identifying the source for and addressing the topics specified in 10 CFR 51.60(b)(3). At the time the report is created, these topics can be addressed from information already possessed by the licensee.

- A summary report based on existing information, of the type submitted by TVA for the Edgemont site, would require an estimated 16 hours of labor by the licensee to prepare, review, and submit. A more elaborate report could require somewhat more resources. One employee of the licensee, working approximately 40 hours, and one licensee manager, working approximately 16 hours, should be sufficient to prepare such a report based in part on existing materials but also requiring collection of new information. Including clerical support, QA/QC, and review by upper management, an estimate of 60 hours appears reasonable.

- Assuming there are no significant outstanding issues, NRC review of an Environmental Report supporting an application for license termination should not be extensive. Actions performed at the site will already have been reviewed by NRC in detail. If NRC has determined that a transfer of site ownership to the Federal or State Government is appropriate, all pertinent environmental factors should already have been assessed. At a minimum, contacts with staff responsible for the Edgemont license termination review indicated that 1-2 hours might be necessary for reviewing an Environmental Report Supplement of the type submitted by TVA. For a more elaborate report, or if there are outstanding issues, a review time of 24 hours for NRC staff appears reasonable, including time needed to review information submitted by the licensee, identifying how the information in the Environmental Report should be reflected in an Environmental Assessment prepared by NRC, and receive necessary concurrences.

- Thirteen licensees will terminate their licenses in the next ten years. One licensee is expected to terminate before a rule change can become effective (i.e., before Year One, which is estimated at two years from the present which is based on the normal rulemaking process). An additional three will terminate by Year Five; an additional nine will terminate by Year Ten.

- All costs are calculated as present values using a discount rate of 7 percent and assuming that the rulemaking is promulgated in Year One, three terminations occur in Year Five, and nine terminations occur in Year Ten. A 7 percent discount rate is recommended in the NRC *Regulatory Analysis Guidelines* (Section 4.3.3).

- All NRC labor rates in the analysis are partially "loaded," in that they include allowances for fringe benefits and geographic cost variations (as specified in NRC's Generic Cost Catalog).

- Cost estimates do not include active public opposition.

- All costs are given in 1996 dollars.

Costs and Benefits

Licensee costs of preparing the Environmental Report called for under 10 CFR 51.60(b)(3) were calculated for two scenarios -- "low" and "high" -- as defined below:

- Low Case: For a short Environmental Report Supplement, similar to that prepared by TVA for the Edgemont site, an estimated 16 hours would be required. This would be at a rate of $72.72/hour (the labor rate for licensee staff provided by the NRC's Forecast model);

- High Case: For a more detailed Environmental Report, addressing potential environmental issues, an estimated 60 hours would be required. Again, this would be at a rate of $72.72/hour.

NRC costs of reviewing the Environmental Report would be the following:

- Low Case: For a short Environmental Report Supplement, an estimated two hours would be required. This would be at a rate of $67.50/hour;

- High Case: For a more detailed Environmental Report, an estimated 24 hours would be required. Again, this would be at the rate of $67.50/hour.

NRC costs of promulgating a rule change[1] were estimated for four alternatives:

- No Action: Retain the current § 51.60(b)(3) requiring licensees to prepare environmental reports for termination of a license for the possession and use of source material for uranium milling. This alternative will provide a baseline cost to calculate incremental cost/benefits for the other alternatives.

- Action at this time utilizing standard rulemaking procedures, publishing both Preliminary and Final Rules: Develop and publish the proposed rulemaking to eliminate the current requirements in § 51.60(b)(3) for public comment and the final rulemaking. This has been estimated to require one-half of a staff year (i.e., 2,080 hours ÷ 2 = 1,040 hours), at a rate of $67.50/hour.

- Action later "piggybacked" on another Part 51 rulemaking: Combine this action with a future Part 51 rulemaking which would reduce costs through sharing of Federal Register printing expenses, economies of scale in comment summary and response activities, and expended effort by NRC staff. It is estimated that one-third of a staff year (i.e., 2,080 hours ÷ 3 = 693 hours) would be required, at a rate of $67.50/hour.

- Action at this time utilizing a direct final rule: Publish a proposed rule containing an announcement that if no significant opposing comments are received, the rule will become final (a "direct final" rule). This would require preparation of the rulemaking materials. It is estimated that one-quarter of a staff year (2080 hours ÷ 4 = 520 hours) would be required, at a rate of $67.50/hour.

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[1] The NRC's regulatory analysis guidance views the costs of developing the rule change as sunk costs and as such are excluded from the NRC regulatory analyses. This is appropriate at the regulatory analysis stage because these costs have been expended to permit the NRC to reach a decision on the rule change (pre decisional), and are incurred regardless of whether the rule is ultimately adopted or not. However, at the rulemaking plan stage when one is considering whether or not to undertake the rulemaking burden, these costs provide a very significant factor, and as such, have been factored into the cost-benefit equation.

Table 1 provides a summary of costs and benefits, with the benefits expressed as savings and placed in parentheses. All results are total lifetime costs, expressed on a present value basis and are shown in 1996 dollars

TABLE 1 - SUMMARY OF COST AND BENEFITS

	ALTERNATIVE 2		ALTERNATIVE 3		ALTERNATIVE 4	
	LOW	HIGH	LOW	HIGH	LOW	HIGH
LICENSEE REPORTS	(8000)	(29000)	(8000)	(29000)	(8000)	(29000)
NRC REVIEW	(1000)	(11000)	(1000)	(11000)	(1000)	(11000)
NRC RULEMAKING	70000	70000	47000	47000	35000	35000
NET COST (SAVINGS)	61,000	30,000	38,000	7,000	26,000	(5,000)

Assessment of Likely Impact

The rulemaking will eliminate an unnecessary report that only the licensees for uranium mills are now required to prepare. The rulemaking will make the requirements for license termination more consistent for all NRC licensees.

Analyses of the Four Alternatives

The pros and cons of these alternatives are described below.

Alternative 1: Retain the current requirement (No Action).

Pro

- Precedent (Edgemont case) indicates that the environmental report prepared at license termination need not be overly extensive (i.e., a summary report referencing previous environmental reports would be sufficient). An affected applicant/licensee would not incur a significant burden in preparing the report.
- Because the report prepared at license termination should not have extensive new information, NRC would not incur significant burden in reviewing the report.

- Only about 25 uranium mill licensees are currently affected by the requirement. Of them, only five are expected to complete decommissioning in the next five years. One licensee may be seeking license termination before NRC can finalize a rule change to Part 51 if the approach of a direct final rule does not work.

- Retaining the requirement saves the NRC one rulemaking effort which could be directed toward an area that has a higher payoff.

Con

- There is no practical need for an environmental report at the time of license termination because there essentially is nothing new to report (i.e., all impacts have been mitigated through compliance with applicable NRC and EPA rules).

- Although the requirement imposes a nonsubstantial burden on NRC in reviewing the report, this burden is unnecessary.

- Although only about 5 licensees will benefit in the next five years, from a long term perspective, 13 uranium mill licensees are expected to complete decommissioning in the next 10 years, and 12 of the 13 licensees potentially would be able to be benefit by the rule change.

- Federal agencies are being encouraged to eliminate paperwork burdens and unnecessary regulations.

Alternative 2: Action now to eliminate the current requirement using the normal rulemaking process.

Pro

- Eliminating the requirement would relieve applicants/licensees of an unnecessary reporting burden, yielding a cost savings to them.

- Eliminating the requirement would relieve NRC of an unnecessary review burden.

- Eliminating the requirement would result in more consistent treatment of licensees because only uranium mills are now subject to the environmental report requirement.

- Eliminating the requirement would avoid compliance and enforcement issues that may arise from a regulation that, for the practical reasons outlined above, may get ignored either by licensees or by NRC.

- Any action on eliminating the requirement would bolster the perception that NRC is aggressively acting on the removal of unnecessary regulations.

Con

Con

- Eliminating the requirement would impose a rulemaking burden on NRC which may not be commensurate with the benefits because of the small burden imposed by the requirement on licensees and the small number of licensees affected.

- The public might perceive that the proposed amendment is removing a final opportunity for scrutiny of the licensee's performance of its obligations.

- Because of the small burden currently imposed by the requirement and the small number of licensees that would be affected, the cost savings obtained from eliminating the requirement will not equal the cost of promulgating the rule.

Alternative 3: Action later to eliminate the requirement by piggybacking on another Part 51 rulemaking.

Pro

- This alternative would relieve applicants/licensees of the same unnecessary reporting burden, with the same cost savings, as Alternative 2.

- This alternative would relieve NRC of the same unnecessary review burden, with the same cost savings, as Alternative 2.

- Piggybacking two rules can provide additional cost savings relative to Alternative 2 by (a) reducing the costs of tracking separate rulemakings in the semiannual OMB regulatory agenda and in other tracking systems, (b) reducing Federal Register printing costs, (c) allowing more economical processing of the comment summary and analysis, and (d) allowing a single staff member to manage the rulemaking.

Con

- Eliminating the requirement would impose a rulemaking burden on NRC although considerably less than under Alternative 2.

- No forthcoming Part 51 rulemaking has been identified with which elimination of the 10 CFR 51.60(b)(3) requirement could be consolidated. Hence, the benefits of a combined rulemaking are somewhat speculative.

- Because of the small burden currently imposed by the requirement and the small number of licensees that would be affected, the cost savings from eliminating the requirement even with a piggybacked rule may still be less than the cost of promulgating the rule if another rulemaking action were very small and similar to the action under consideration.

Alternative 4: Action now to eliminate the requirement by a "direct final" rule.

Pro

- This alternative would relieve applicants/licensees of the same unnecessary reporting burden, with the same cost savings, as alternatives 2 or 3.

- This alternative would relieve NRC of the same unnecessary review burden, with the same cost savings, as alternative 2 or 3.

- Direct final action will provide additional cost savings in promulgating the rule relative to alternatives 2 or 3 by eliminating the preparation of a comment summary and response and a final rule.

Con

- Direct final action will impose a rulemaking burden on NRC although considerably less than under alternatives 2 and 3.

- If significant public comments are received opposing the rulemaking, it will be necessary to prepare a comment summary and response document and to publish a final rule, thus eliminating the cost savings otherwise available from use of the direct final approach.

- Because of the small burden currently imposed by the requirement and the small number of licensees that would be affected, the cost savings from eliminating the requirement through a direct final rule will not equal the cost of promulgating the rule unless the "high case" assumption is made.

Recommendation

The staff recommends the selection of Alternative 4 since it has a potential to achieve a savings. The staff believes that because of the limited work experience in this area to date (only one application has thus far been submitted), the actual time to develop and review environmental reports may be skewed to the low side. In order to take a conservative approach, the staff believes that actual costs for such activities will be closer to the high option rather than the low option. The staff also believes that public comments on the rulechange can be mitigated by providing the best information available in the rulemaking package. The process of reviewing decommissioning and reclamation activities currently addresses environmental issues, and may involve a full NEPA review including public notice and

public meetings. Therefore no additional public controversy over the rule change is expected to arise.

Office of General Counsel Legal Analysis

OGC was asked for its preliminary opinion relative to the NMSS request to eliminate Item (b)(3) from 10 CFR 51.60. OGC agreed that submission of an Environmental Report on the termination of a uranium mill license is a useless and unnecessary reporting requirement. At the time of the termination of the license, the work is done, and the environmental impacts resulting from a dedicated disposal site have been evaluated and mitigated in accordance with Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) and the NRC and EPA rules. OGC saw no outstanding legal issues in eliminating the requirement, on the grounds that the rule change is not arbitrary or capricious, and is in compliance with NEPA (rules regarding reporting requirements are covered by a categorical exclusion in 10 CFR 51.22(c)(3)(iii)). With respect to substantive NEPA issues, OGC saw no significant legal problem. In OGC's view termination of the specific license, after completion of reclamation and decommissioning, payment of funds for long term care and oversight, and the Commission's determination under Section 83c of the Atomic Energy Act, is not a major Federal action, but is ministerial and an adjunct to the transfer of the site to the permanent custodian under the NRC general license in 10 CFR 40.28. OGC notes that in order to go directly to a final rule, a finding under 5 U.S.C. 553b that comments are unnecessary will need to be made even though the Federal Register Notice may allow for members of the public to comment.

Agreement State Implementation Problems

Although uranium or thorium production facilities are located in four Agreement States - Washington, Colorado, Illinois, and Texas, there is no impact on the Agreement States as a result of the proposed amendment. There is no requirement for the Agreement States to follow or comply with the requirements of 10 CFR 51.60 because there is no compatibility requirement for this particular regulation. Hence, there is no impact on the Agreement States as a result of the proposed changes to 10 CFR 51.60

Supporting Documents Needed

None.

Resources Needed

The estimated resources needed to accomplish the rulemaking would be approximately one quarter of a staff year. About 60 per cent of the effort would be from RES and the remaining 40 per cent would come primarily from NMSS, OGC, and State Programs.

Lead Office Staff and Staff from Supporting Offices

The lead office for this effort would be RES and the project officer would be Joseph J. Mate. Other staff offices and personnel included would be:

NMSS	-	Mike Fliegel
OGC	-	Bob Fonner
OSP	-	Dennis Sollenberger

Steering Group/Working Group

There is no need for a steering group for this rulemaking. The Working Group is identified above.

Enhanced Public Participation

This rulemaking will be placed on the electronic bulletin board at Fedworld. The proposed amendment will also be published in the Federal Register as a direct final rule. Comments can still be made during the specified period before the final rule becomes effective.

EDO or Commission Issuance

Because the draft amendment does not represent a significant policy issue, it is recommended that the Executive Director for Operations issue the final rule.

Schedule

The estimated time to publish this rule in final form using the direct final rule approach is approximately 3 months from the date of the approval of the rulemaking by the EDO.