



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 15, 1984

MEMORANDUM FOR: T. A. Rehm
Assistant for Operations, EDO

FROM: Robert E. Browning, Director
Division of Waste Management, NMSS

SUBJECT: REVISED CONCEPTS PAPER FOR THE PROGRAMMATIC AGREEMENT
WITH EPA ON MILL TAILINGS

Enclosed for your information is the latest version (dated May 14) of the proposed concept paper for the Programmatic Agreement with EPA on mill tailings, containing revisions made subsequent to our meeting with Chairman Palladino and Commissioner Asselstine on May 8, 1984. The revisions are presented in comparative text and are primarily editorial in nature, reflecting changes suggested by various staff including OELD to provide desired clarification. The revisions also include two substantive changes which merit explanation:

- 1) Objective 1 - The previous language implied that EPA could expect to concur on the NRC mill tailing regulations in their entirety. The present language allows only that the parts of NRC's final rule incorporating groundwater protection provisions would be subject to EPA concurrence. The revised language eliminates the sense of broad EPA concurrence to be consistent with Secs. 84(a)(2) and (3) of the AEA.
- 2) Objective 4, ("methodology" to "generic guidance") - In our discussions pursuant to development of the concepts paper, staff have used the word "methodology" alternately with the word "protocols" to describe the guidance EPA has indicated they will provide to assist us in evaluating licensee proposed alternate concentration limits. Because EPA's experience with the development of "protocols" and "methodologies" is such that they could conceivably give a more rigid interpretation to our request than we intended, staff recommend that the term "generic guidance" be used to replace either of these terms in future discussions or negotiations with EPA staff.

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Based on the discussions at our May 8 meeting, WM staff also has prepared draft language on the NRC/EPA authority and generic guidance (protocol) issues for possible incorporation into the concepts paper (Enclosure 2), and prepared draft implementation and enforcement policy language (Enclosure 3).

Original Signed by
Robert E. Browning

Robert E. Browning, Director
Division of Waste Management, NMSS

Enclosures:

- 1) Revised Concept Paper
- 2) Draft Language on NRC/EPA
Authority and Generic
Guidance Issues
- 3) Implementation and
Enforcement Policy
Language

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

(EDITORIAL SUGGESTIONS FROM NRC STAFF REVIEW FOLLOWING
THE 5/4/84 EPA/OGC-NRC/OGC MEETING AND TWO SUGGESTED SUBSTANTIVE CHANGES
SHOWN IN COMPARATIVE TEXT.)

INTRODUCTION

THE PURPOSE OF THE PROGRAMMATIC AGREEMENT WILL BE TO ACHIEVE THE
FOLLOWING OBJECTIVES:

1. THERE SHOULD BE A SINGLE COMPREHENSIVE SET OF REGULATIONS
GOVERNING THE ~~DISPOSAL-OF~~ [PROTECTION OF GROUND WATER UNDER]
URANIUM MILL TAILINGS, ISSUED BY NRC AND CONCURRED IN BY THE
EPA.
2. 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.

3. THERE SHOULD BE ESTABLISHED A FRAMEWORK FOR EPA TO FULFILL ITS STATUTORY RESPONSIBILITY FOR CONCURRENCE IN NRC REGULATIONS AND TO ASSURE THAT ITS STANDARDS TO PROTECT PUBLIC HEALTH, SAFETY, AND THE ENVIRONMENT ARE SATISFIED, [AND ARE A BASIS FOR NRC AND AGREEMENT STATE INTERIM PROGRAMS.]

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 PROCEDURES ASSOCIATED WITH THE REGULATION OF MILL TAILINGS DISPOSAL. THIS PROGRAMMATIC AGREEMENT WILL ESTABLISH THE FOLLOWING:

- (1) THE FINAL NRC REGULATIONS WILL INCORPORATE PROVISIONS FOR PROTECTION OF GROUNDWATER THAT ARE, TO THE MAXIMUM EXTENT PRACTICABLE, AT LEAST COMPARABLE TO SWDA REQUIREMENTS, AND WILL CONFORM TO THE GROUNDWATER PROVISIONS OF 40 CFR PART 192 AS REQUIRED BY LAW. NRC MAY APPROACH RULEMAKING IN STEPS TO REACH A FINAL RULE THAT ACCOMPLISHES ALL ITS CONGRESSIONAL MANDATES. THAT PART OF NRC'S FINAL RULE INCORPORATING GROUNDWATER PROTECTION PROVISIONS, INCLUDING SPECIAL LISTING

OF HAZARDOUS CONSTITUENTS, WILL BE SUBJECT TO EPA CONCURRENCE. AVAILABLE IMPLEMENTING DOCUMENTS, SUCH AS REGULATORY GUIDES, WILL BE GIVEN TO EPA FOR REVIEW AND COORDINATION IN CONJUNCTION WITH ITS CONCURRENCE.

- (2) AN INTERIM GROUNDWATER MONITORING AND DATA COLLECTION PROGRAM IS NEEDED FOR EXISTING IMPOUNDMENTS OF EXISTING LICENSEES WHILE NRC DEVELOPS AND PROMULGATES FINAL COMPREHENSIVE REGULATIONS AS DISCUSSED IN PARAGRAPH (1) [USING PRESENT PROGRAMS IN PLACE AT EVERY SITE TO THE MAXIMUM EXTENT POSSIBLE FOR THIS PURPOSE] THIS APPROACH IS CONSISTENT WITH THE FLEXIBILITY EPA PROVIDES ITS PERMITTEES THROUGH INTERIM STATUS STANDARDS IN 40 CFR PART 265. ~~IN-THE-INTERIM-MAXIMUM USE-OF-EXISTING-PROGRAMS-SHOULD-BE-MADE.~~

[~~EQUIVALENT~~] MONITORING PROGRAMS [~~PROPOSED~~] BY EXISTING LICENSEES FOR SAMPLE COLLECTION, SAMPLE ANALYSIS, WELL PLACEMENT, ETC., SHOULD ASSURE THAT WHEN NRC FINAL RULES ARE IN PLACE, AN ADEQUATE BASIS WILL EXIST FOR DEVELOPING AND IMPLEMENTING ANY NEEDED CORRECTIVE ACTION PROGRAMS. IN THE INTERIM NRC WILL REQUIRE THAT MITIGATIVE ACTIONS CONTINUE TO BE TAKEN ON A CASE-BY-CASE BASIS, AS NECESSARY.

- (3) 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.
- (4) NRC MAY APPROVE ALTERNATE CONCENTRATION LIMITS ON A CASE-BY-CASE BASIS PROVIDED THAT NRC FOLLOWS EPA GENERIC ~~[METHODS]~~ [GUIDANCE] FOR EVALUATING ALTERNATE CONCENTRATION LIMITS. NRC MAY ALSO ON A CASE-BY-CASE BASIS UTILIZE SUPPLEMENTAL EVALUATION METHODS IN ADDITION TO THOSE USED BY EPA. NRC WILL ~~[KEEP-EPA-FULLY]~~ INFORM ~~[EPA]~~ EPA ~~[CASE-BY-CASE ACTIONS]~~ OF ANY SUCH APPROVALS.
- (5) SECTION 84C OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, ALLOWS APPLICANTS FOR NRC LICENSES TO SUBMIT LICENSING ALTERNATIVES TO NRC FOR REVIEW AND APPROVAL. NRC AND EPA RECOGNIZE THAT THE FLEXIBILITY AFFORDED BY SECTION 84C IS AN IMPORTANT ASPECT OF THE LICENSING AND REGULATORY PROCESSES.

- (6) AGREEMENT STATE IMPLEMENTATION OF EPA STANDARDS AND STATE REGULATIONS COMPATIBLE WITH NRC FINAL RULES MAY TAKE PLACE PURSUANT TO THE SAME PROGRAMMATIC AGREEMENTS WITH EPA APPLICABLE TO NRC LICENSING AND REGULATION IN GENERAL AND AS REQUIRED AND PERMITTED BY THE ATOMIC ENERGY ACTION OF 1954, AS AMENDED. (NOTE, HOWEVER, THAT SECTION 2740 OF THE ACT GIVES STATES SOME SPECIFIC FLEXIBILITY IN THIS AREA.)
- (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 THE PROGRAMMATIC AGREEMENT.

PROPOSED LANGUAGE TO INSERT IN PARAGRAPH (4) OF NRC/EPA
PROGRAMMATIC AGREEMENT -

1. AUTHORITY ISSUE:

THE NRC BELIEVES THAT IT HAS THE AUTHORITY TO APPROVE SITE SPECIFIC ALTERNATE CONCENTRATION LIMITS WITHOUT EPA CONCURRENCE. THE EPA BELIEVES THAT IT HAS THE AUTHORITY TO REQUIRE SUCH CONCURRENCE, BUT WILL REFRAIN FROM EXERCISING THE AUTHORITY IT CLAIMS TO HAVE TO CONCUR IN SUCH LIMITS ON A CASE-BY-CASE BASIS.

2. GENERIC GUIDANCE (PROTOCOL) ISSUE:

IF THE EPA IS UNABLE TO PROVIDE MUTUALLY ACCEPTABLE GENERIC GUIDANCE OR WHILE MUTUALLY ACCEPTABLE GENERIC GUIDANCE IS BEING DEVELOPED, THE NRC WILL USE THE REFERENCED GENERAL STANDARD FOR APPROVING ALTERNATIVE CONCENTRATIONS IN 40 CFR 264.94(B) AND EVALUATE THE LISTED FACTORS IN 40 CFR 264.94(B) IN ANY ACTION TO APPROVE SITE SPECIFIC ALTERNATE CONCENTRATION LIMITS.

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 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 84 C PROVIDES NRC SUFFICIENT AUTHORITY TO INDEPENDENTLY APPROVE ALTERNATIVES SO LONG AS THE COMMISSION CAN MAKE THE REQUIRED DETERMINATION.

IMPLEMENTATION AND ENFORCEMENT POLICY

(NOTE: LANGUAGE WHICH MIGHT BE USED IN ONE OR ALL OF THE FOLLOWING: LETTERS TO LICENSEES AND AGREEMENT STATES, IN THE ANPRM ON FURTHER REVISIONS TO APPENDIX A OF PART 40, OR IN A FORMAL POLICY STATEMENT.)

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.

[NOTE: - BECAUSE EPA COULD CONCEIVABLY GIVE A MORE RIGID INTERPRETATION TO THE DEVELOPMENT OF "PROTOCOLS" THAN IS INTENDED BY NRC, STAFF SUGGEST THAT THE TERM "GENERIC GUIDANCE" BE USED INSTEAD OF THE WORD "PROTOCOLS" TO DESCRIBE THE METHODS TO BE PROVIDED BY EPA TO ASSIST NRC IN EVALUATING PROPOSED ALTERNATE CONCENTRATION LIMITS.]