

- 1 -

JUN 21 1984

Mr. Joseph A. Cannon  
Assistant Administrator for  
Air and Radiation  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

Dear Mr. Cannon:

Pursuant to the verbal understanding between Administrator Ruckelshaus and Chairman Palladino at their meeting on May 21, I am transmitting for your review and comment a revised staff draft programmatic agreement on the implementation of EPA uranium mill tailings standards. When you have completed your review, we would be happy to meet with you at your earliest convenience to discuss your comments.

Sincerely,

(Signed) John G. Davis  
John G. Davis, Director  
Office of Nuclear Material  
Safety and Safeguards

Enclosure: Draft Programmatic  
Agreement

[Stamp]

Interagency Programmatic Agreement  
Between the U.S. Nuclear Regulatory Commission  
and the U.S. Environmental Protection Agency on  
Uranium Mill Tailings Regulation

INTRODUCTION

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 pursuant to sections 84 and 275 of the Atomic Energy Act, as amended (AEA).

Section 275 of the AEA requires EPA to promulgate standards for the regulation of the radioactive hazards associated with mill tailings as well as hazards from substances regulated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). EPA promulgated its standards on September 30, 1983 (40 CFR Part 192). Section 84 of the AEA requires the

CONFIDENTIAL

2 -

Administrator's concurrence in general requirements established by the Commission for the management on non-radioactive hazardous constituents. NRC must revise its regulations in order to conform them to the EPA standards. The EPA standards incorporate by reference groundwater protection provisions found in Part 264 of the RCRA regulations. To meet the UMTRCA mandate, NRC must implement the groundwater provisions applicable to uranium mill tailings through its conformed regulations.

Both the NRC and the NRC Agreement States are legally obligated under Section 275d of the AEA to implement and enforce the EPA standards for 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 the Agreement States includes enforcement in the interim while conforming and implementing rule changes are made.

#### PREMISES

The Programmatic Agreement is based on the following premises:

1. There should be a single comprehensive set of regulations governing the protection of groundwater from contamination by uranium mill tailings, issued by NRC in consultation with the EPA.

DRAFT

3 -

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 general requirements for groundwater protection pursuant to Section 84a(3) of the AEA.

#### AGREEMENTS

- (1) The NRC will insure through its comprehensive regulations that the management of any byproduct material relating to mill tailings disposal is carried out in a manner that conforms with applicable general standards promulgated by the Administrator of the EPA under section 275 of the AEA, and with general requirements established by the NRC, with the concurrence of the EPA Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended. NRC may approach rulemaking in steps to reach a final rule that accomplishes all its congressional mandates. Pursuant to Section 84a(3) of the AEA, NRC will

submit its general requirements for groundwater protection to EPA prior to codification in a final rule or to programmatic implementation.

- (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). NRC and EPA agree to the use of present programs in place at every site to the maximum extent practical for this purpose. This approach is consistent with the flexibility EPA provides its permittees through interim status standards in 40 CFR Part 265.

NRC will evaluate monitoring programs by existing licensees for sample collection, sample analysis, well placement, etc., and will require that the monitoring programs are upgraded as necessary to 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, until NRC rules are in place, NRC will require that mitigative actions continue to be taken on a case-by-case basis, as necessary. Interim corrective actions will be required of a licensee if it is determined by NRC that there are significant health, safety, or environmental problems resulting from existing practices.

- (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. EPA agrees to furnish NRC available case-by-case decisions on alternate concentration levels (ACLs) for sites licensed by EPA and to provide technical consultation and services.
- (4) NRC in consultation with EPA will develop a methodology for reviewing applications for ACLs which will take into consideration the EPA criteria for alternate concentration limits codified in 40 CFR 264.94. EPA agrees that this will satisfy the provision in 40 CFR 192 requiring EPA concurrence in NRC approval of ACLs. Consequently, EPA concurrence in any NRC case specific determinations of ACLs will not be necessary.
- (5) Section 84c of the AEA 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 development of state regulations compatible with NRC final rules may take place pursuant to

CONFIDENTIAL

6 -

this programmatic agreement. (Note, however, that Section 274o gives states flexibility in this area.)

- (7) NRC and EPA agree that appropriate senior management from each agency (Assistant Administrator-EPA/Office Director-NRC) should meet quarterly to coordinate activities of mutual concern and to assess the status and progress of the regulation of mill tailings as laid out in this agreement.
- (8) 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.