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August 7, 1985

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

NOTICE OF PROPOSED RULEMAKING ON CRITERIA
FOR EXTRAORDINARY NUCLEAR OCCURRENCE

We have reviewed the notice of proposed rulemaking which addresses the criteria for an "Extraordinary Nuclear Occurrence" (ENO) and offer the following comments for your consideration.

Option 1 Comments

140.84

Paragraph (a) - Changing the phrase "could have been or might be exposed" to "has been or probably will be exposed" is a favorable modification because it reduces the subjectiveness in ascertaining an ENO.

Table 1 - The reduction of the whole body dose by 75 percent (from 20 rem to 5 rem) is meant to correspond to EPA recommendations. However, the dose is now called a "committed" dose which is derived from the sum of various potential sources, including food. Therefore, the 5 rem may, in fact, be delivered over a period of years, which might not constitute a substantial exposure. A time requirement such as "5 rem in any one year" should be added.

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Paragraph (a) - Changing the requirement of clinical evidence of injury to a dose of 100 rads is acceptable in that it eliminates the problems of radiosensitivity differences between individuals and false positives due to stress induced symptoms.

Option 2 Comments

140.84

Paragraph (a) - By adding the statement that the individual to be considered in calculating dosage is located on any site boundary for the duration of the accident, much smaller releases would be considered substantial and the NRC's declaration of an ENO would be based on an unlikely situation rather than on fact.

140.85

Paragraph (a) - This proposed addition also makes the determination more theoretical. A calculated collective population dose is not a definitive indicator of substantial damage. The dose is dependent on the site and the size of the population rather than the actual release and resulting damage.

Paragraph (b) - This proposal states that an individual has caused substantial damage if expensive real estate is contaminated after an event. Radioactive decay and ease of decontamination should be considered when using this approach. Very expensive property contaminated for a short time is not necessarily substantial damage.

Option 3 Comments

140.84

Paragraph (a) - This proposal gives no guidance as to the type of property, size of property, and the length of time the property must be unfit for normal use. As currently stated, items of a trivial nature which become contaminated would meet the criterion.

Paragraph (b) - This proposal does not specify the location where the dose is received. Also, it again relies on the hypothetical "could be received."

Paragraph (c) - A proposal such as this highlights an area in which licensees are vulnerable - radioactive waste shipments. This option, much like the present regulation, is very conservative in the area of transportation accidents. There is a higher probability of triggering an ENO for a transportation accident than any other scenario. However, even though the spread of contamination following an LSA radwaste shipment accident may meet these criteria, it would not necessarily be a substantial release with substantial damage relative to other criteria scenarios.

General Comments

By separating small mishaps which are not overtly harmful to persons or property from large scale general population hazards, all interests could be better protected. For smaller releases, licensees would be protected by the legal system and the burden of proof. For large scale accidents, the plaintiff would be protected and assisted by the Price-Anderson Act through the waiver of certain defenses by the utility when a legitimate liability exists.

In the area of radiation injury claims, an obstacle for the plaintiff has been in demonstrating a causal link. In considering when to remove the burden of proving negligence from the plaintiff, we must be aware that the National Institutes of Health has already developed Probability of Causation tables to almost completely eliminate the plaintiff's burden of demonstrating causal link. Therefore, in adopting more lenient criteria for determining an ENO, it is possible that an increase of litigation may occur in which the licensee has no defense. Following a release defined as substantial (according to the proposed rule), any individual who did receive or may have received a dose and develops a cancer within the next 20 years would be able to collect damages from the licensee even though neither causal link nor negligence has been proved. As this would be an unreasonable burden on the licensee, wording which prohibits both presumed negligence and presumed causation from being used concurrently ought to be added.

In conclusion, rather than make the criteria more general as suggested in Option 3, additional guidelines ought to be added which anticipate and address more of the problems which are likely to arise. Only then can such occurrences be handled efficiently and fairly.

We appreciate the opportunity to comment on this proposed rulemaking.

Very truly yours,

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