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ADJUDICATION

DOCKET NUMBER  
PROPOSED RULE **PR 20**  
(64FR35090)

December 22, 1999

Annette L. Vietti-Cook, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Attention: Rulemaking and Adjudications staff

Re: Release of solid materials at licensed facilities, scoping comments

Dear Ms. Vietti-Cook:

Below are comments of the New York State Office of the Attorney General:

1. The proposed policy would allow the release of materials and equipment having residual radioactivity into normal channels of commerce and into the environment, with no intention of further tracking or monitoring of these materials by NRC or other agencies. Current NRC practice allows such materials and equipment to be released on a limited, case-by-case basis, but the proposed policy would change the criteria for release and allow much larger quantities to be released. We see an overall lack of accountability, and a change in the current level and structure of accountability, in this proposed policy. NRC should address these questions of accountability in its NEPA review.
2. Given the likelihood of occasional problems resulting from this policy if adopted, state and local governments and agencies may be called upon to perform additional monitoring and emergency response duties. The policy appears to shift costs and responsibilities of routine monitoring and emergency response from NRC and its licensees to state and local governments and agencies. NRC should address such cost shifting in its NEPA review.
3. Benefits of the proposed policy appears to be restricted to agencies and other parties that seek relief from a difficult waste-disposal problem, including NRC, DOE, various NRC licensees, and

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other generators of the contaminated materials and equipment. We see little or no benefit to other levels of government and to the public from this proposed policy. The public and other levels of government appear to face increased costs and/or risks if the proposed policy is adopted. NRC should address this apparent inequity in its NEPA review.

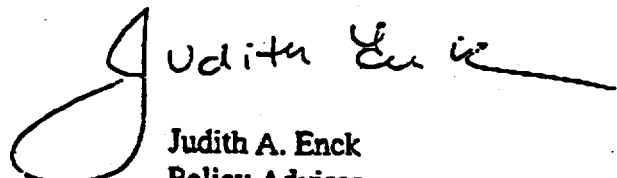
4. The proposed policy uses a dose-based criterion for release of materials and equipment having residual radioactivity. Such a dose is not directly measurable but requires expertise for its calculation. Given the likelihood of occasional problems resulting from this policy if adopted, we are concerned that local governments, private companies and individuals may sometimes need to check released materials and equipment for acceptable levels of residual radioactivity but will lack the expertise to do so. While we recognize the possibility of consulting trained experts in such instances, we think that continual recourse to such experts in normal channels of commerce and private life is unlikely, i.e., that it will be seen as too inconvenient, intrusive, or expensive to deal with most cases that may arise, resulting in some cases where real risks are ignored due to lack of a clear and easily applicable standard. NRC should address the lack of any direct measure of compliance with the release criterion, and the public health consequences thereof, in its NEPA review.

5. NRC should address questions of legal liability, and whether and how the liability of companies and agencies that produced or released the contaminated materials and equipment might be changed by the proposed policy, in its NEPA review.

6. Release of materials and equipment contaminated with residual radioactivity into normal channels of commerce under this policy may occasionally result in contamination problems that are associated with a particular company's products, resulting in loss of public confidence in that company and its products. NRC should address the liability issues that may arise in such cases in its NEPA review.

7. Adoption of a policy that allows certain materials (in this case materials and equipment contaminated with residual radioactivity) to enter normal channels of commerce may potentially have implications with respect to interstate commerce. NRC should specifically address the rights of state and local governments to impose stricter standards, and any possible limitations thereon under the interstate commerce clause, in its NEPA and other related reviews.

Sincerely,

  
Judith A. Enck  
Policy Advisor