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Joan Claybrook, President

March 15, 2004

Air and Radiation Docket
Environmental Protection Agency
EPA West Room B108
Mailcode: 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

ATTENTION: Docket ID #OAR-2003-0095
(RE: 40 CFR Chapter 1: Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment; Proposed Rule)

**INITIAL COMMENTS OF PUBLIC CITIZEN'S
CRITICAL MASS ENERGY & ENVIRONMENT PROGRAM**

To Whom It May Concern:

We are extremely concerned with the proposals outlined in the EPA's Advance Notice of Proposed Rulemaking regarding "low-activity" radioactive waste. It should not be the Environmental Protection Agency (EPA)'s priority to reduce the so-called "regulatory burden" on companies that produce wastes and contaminants, to relax the standards by which nuclear waste can be dumped, or increase the number of possible dump sites for waste generators, particularly when doing so may increase the number of hazards to which a member of the public could be exposed, or when such relaxations would create new potential for irresponsible waste management or otherwise diminish an agency's ability to effectively regulate.

While proper management of nuclear waste becomes an increasing challenge as more is produced every day, it is, and should be, the obligation of all agencies with relevant oversight to meet this challenge without fail, and implement policies and procedures which completely isolate and contain all radioactive waste that is generated throughout the nuclear fuel cycle, and all naturally occurring radioactive sources that pose new or increased hazards to the public due to technological enhancement or other human intervention (mining, milling, oil exploration, etc.).

Because radiation exposures to humans that result from human activities in the nuclear fuel cycle or other technologies can be minimized or prevented by careful human responses, this should be done as part of a prudent and rigorous application of the Precautionary Principle in any and all nuclear activities. Currently, there is ample evidence to indicate that exposure to ionizing radiation poses health risks to humans, and that any level of exposure poses some accompanying health hazard. Further, there is no evidence that relaxation of standards on nuclear waste or that

regular, repeated exposure to nuclear radiation has health benefits. Finally, the only clear benefits to be derived from a relaxation of regulatory standards in nuclear waste management would be those benefits to businesses that produce nuclear waste. It is not, and should not be, within the EPA's purview to creatively pursue or otherwise devote resources to implementing practices whose sole beneficiaries would be waste or pollutant generators, and which could pose grave and irreversible risks to the general public and the shared environment. In implementing the Precautionary Principle in matters of nuclear waste, the onus should be on an independent oversight agency to justify any practices by definitively demonstrating the harmlessness of such a practice. The onus of proof should not be on the public to prove harm to health, especially when such harm might potentially stem from a variety of technologies, activities or pollutants, of which nuclear waste is only one. Unless harmlessness can be definitively demonstrated (and it is possible that it could never be so demonstrated), it is the duty of regulators to ensure that radioactive wastes be thoroughly isolated and contained, and avoidable radiation exposures be minimized to the fullest extent.

In regard to the specific questions posed in the rulemaking notice, a significant number of the questions make it clear that the EPA is attempting to carve out a particular deregulation at the urging of the nuclear waste-generating industry. We are completely opposed to any and all moves towards deregulation.

The ongoing generation of nuclear waste, "low-activity" and otherwise, creates a host of health and environmental problems. Certainly, any so-called solution is really an attempt to manage the waste situation, as wastes with dangerous half-lives of hundreds of thousands of years or more can't really be "disposed" of, in the conventional sense. These wastes will persist and present problems and hazards for many generations to come. Thus, waste management solutions that value the generations of lives to come will be necessarily complex. However, an honest and responsible reaction to that reality does not preclude relatively simple waste management policies and strategies. Simply put, it is most appropriate for the EPA to implement and maintain policies that ensure minimization, isolation and containment of all nuclear waste materials, and the prevention of forced exposures to radiation upon the public. In relation to the EPA's current proposed rulemaking, such policies should do the following:

- Minimize production of "low-activity" radioactive wastes and "low-activity" mixed wastes
- Minimize or eliminate transportation of "low-activity" radioactive wastes and "low-activity" mixed wastes. All such transportation of these wastes should be fully documented, manifested, labeled and should be monitored and traceable by regulatory agencies.
- Restrict the disposition of "low-activity" wastes to fully protective, fully monitored, licensed waste storage facilities. This would, under current scenarios also require that:
 1. No nuclear wastes be dumped in RCRA-C (Resource Conservation and Recovery Act, class C) waste facilities (hazardous waste facilities), since such facilities are known to leak, and were not specifically designed for, nor are they licensed for, the disposition of radioactive waste materials. Such a practice would pose hazards to public health.

2. No nuclear wastes be dumped in RCRA-D waste facilities (solid waste facilities, aka sanitary landfills, community landfills, garbage dumps), since such facilities are known to, and even designed to, leak, and were not specifically designed for, nor are they licensed for, the disposition of radioactive waste materials. Such a practice would pose hazards to public health.
3. Specific policies be enacted that explicitly forbid and actively prevent incineration of “low-activity” wastes. Such practices pose hazards to public health.
4. Specific policies be enacted that explicitly forbid and actively prevent nuclear waste/radioactively-contaminated materials from entering recycling streams, either commercial (for infrastructure or building construction or maintenance) or consumer (for fabrication of partially or wholly recycled goods and materials that would be purchased or contacted by the public, via consumer or public goods). Contamination of recycling streams with radioactivity must be actively avoided.
5. Specific policies be enacted that explicitly forbid and actively prevent re-use of nuclear wastes and/or radioactively contaminated materials (including buildings, vehicles and tools) outside of nuclear industries, and mandate full disclosure to workers within the nuclear industry of the contaminated status of such items, to allow appropriate worker safe guards. Such policies would require labeling and monitoring of the item for the entire hazardous lifetime of the particular radionuclide contaminants on or in the item.

Any policies instituted to simplify or avoid duplicative or redundant regulation should only be allowed when the highest common denominator of protectiveness is maintained. The creation of single, overarching policies that would pertain to wastes previously or otherwise regulated by the Department of Energy (DOE), the Nuclear Regulatory Commission, or the Department of Transportation (DOT), should encompass all of the above protections, and allow for meaningful enforcement by the agency – in this case, the EPA.

In response to certain specific questions in section “K” that can and should be addressed from a public interest viewpoint:

4. EPA and NRC should terminate further development of any deregulatory approach outlined in the ANPR.
5. Radionuclide concentration limits are not adequate for limiting the impacts from LAMW. We do not accept that there is a safe level of exposure to radioactivity, or that the public must tolerate some forced radiation exposures as a “cost” to balance the “benefits” of the nuclear fuel cycle.
7. No rule should apply to RCRA-C facilities, privately-owned facilities, or DOE facilities, other than a rule that would ban disposition of nuclear wastes in these facilities, unless they are licensed and monitored for the entire hazardous lifetime of the radionuclides present in the facility itself. If anything, a pre-emptive ban should be imposed regarding that practice.

8. No rule should address or allow disposal of any radioactive waste material in RCRA-D facilities. If anything, a pre-emptive ban should be imposed regarding that practice.
9. DOE nuclear wastes must only be permitted in fully licensed, monitored facilities.
31. Yes, it would be appropriate for the waste generator to be responsible for documenting compliance with any waste form requirements. If a requirement is set by a regulator, a regulated company must be able to document that it is complying with the rules.
32. There should be the maximum level of public participation possible. For this rulemaking, any and all potential persons that could be impacted by radiation exposures from this action should be asked for their consent regarding those exposures.
35. It is inappropriate for the EPA to attempt to subsidize nuclear waste generators by seeking cost savings for the industry, especially those measures that would imperil public health.

Regarding “low-activity” medical wastes, these should be stored onsite until their (typically brief) hazardous lifetime has passed, and they no longer contain radioactivity.

In short, we do not want additional radioactive contamination to enter the public sphere, to contaminate the soil, air or groundwater in our communities.

If the EPA makes the unfortunate decision to continue with this industry-initiated regulatory rollback, it would be of the utmost importance that public notification be broad, wide and effective in informing the public of the import of any potential rule or environmental assessment, and that meetings be noticed and advertised substantially, and timed appropriately for maximum public participation.

Finally, we do not feel that adequate time has been allowed for concerned citizens that do not deal with these issues on a daily basis to learn about this proposed rulemaking and to study it with the depth that it deserves. We hereby request that the EPA extend the comment period for this Advance Notice of Proposed Rulemaking by eight (8) months, during which the EPA should notify any and all potentially impacted communities, surrounding RCRA-D and RCRA-C facilities, of this notice and the comment period.

Thank you for considering the public interest viewpoint.

Sincerely,

David Ritter
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