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U-007-307.83

STANDARDS FOR MANAGEMENT OF URANIUM BYPRODUCT MATERIALS PURSUANT TO SECTION 84 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED AT 58 FR 60344, NOV4EMBER 15 - (USED AS REFERENCE IN OU 5 RI REPORT)

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VI. Miscellaneous

A. Paperwork Reduction Act

In light of NRC's conforming regulations and any recordkeeping regulations adopted thereunder, and the designation in UMTRCA of NRC and Agreement State authority to implement and enforce such regulations, any issues under the Paperwork Reduction Act are properly considered by NRC in its conforming regulations.

B. Executive Order Requirements

This action was submitted to the Office of Management and Budget (OMB) under Executive Order 12291, which was revoked by Executive Order 12866 on September 30, 1993. This action was not classified as "major" under Executive Order 12291. Therefore, the Agency did not prepare a Regulatory Impact Analysis (RIA). OMB completed their review under Executive Order 12866. OMB's written comments (if any) are available in the public docket.

C. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of this rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

It was found in the 1989 rule for 40 CFR Part 61, subpart T that there was no significant impact on small business entities. There has been no change in this finding, since no new tailings piles have been constructed since 1989. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 192

Air pollution control, Environmental protection, Groundwater protection, Hazardous constituents, Hazardous materials, Radiation protection, Radium, Radon, Thorium and Uranium.

Dated: October 29, 1993.

Carol M. Browner,

Administrator.

Part 192 of chapter I, subchapter F of title 40 of the Code of Federal Regulations is amended as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: Sec. 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95–604, as amended.

Subpart D—[Amended]

2. Section 192.31 is amended by adding new paragraphs (k), (l), (m), (n), (o), (p), and (q) to read as follows:

§ 192.31 Definitions and cross-references.

* * * * *

(k) *As expeditiously as practicable considering technological feasibility* means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of available technology; the need for consistency with mandatory requirements of other regulatory programs; and factors beyond the control of the licensee. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(l) *Permanent Radon Barrier* means the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii).

(m) *Available technology* means technologies and methods for emplacing a permanent radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry or one that is reasonably analogous, (such as, by way of illustration only, unreasonable overtime, staffing or transportation requirements, etc., considering normal practice in the industry; laser fusion, of soils, etc.), provided there is reasonable progress toward emplacement of a permanent radon barrier. To determine grossly excessive costs, the relevant baseline against which cost increases shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's tailings closure plan, but costs beyond such estimates shall not automatically be considered grossly excessive.

(n) *Tailings Closure Plan (Radon)* means the Nuclear Regulatory Commission or Agreement State approved plan detailing activities to accomplish timely emplacement of a permanent radon barrier. A tailings closure plan shall include a schedule for key radon closure milestone activities such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

(o) *Factors beyond the control of the licensee* means factors proximately causing delay in meeting the schedule in the applicable license for timely emplacement of the permanent radon barrier notwithstanding the good faith efforts of the licensee to achieve compliance. These factors may include, but are not limited to, physical conditions at the site; inclement weather or climatic conditions; an act of God; an act of war; a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance; labor disturbances; any modifications, cessation or delay ordered by state, Federal or local agencies; delays beyond the time reasonably required in obtaining necessary governmental permits, licenses, approvals or consent for activities described in the tailings closure plan (radon) proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the tailings closure plan by NRC or the affected Agreement State; and an act or omission of any third party over whom the licensee has no control.

(p) *Operational* means that a uranium mill tailings pile or impoundment is being used for the continued placement of uranium byproduct material or is in standby status for such placement. A tailings pile or impoundment is operational from the day that uranium byproduct material is first placed in the pile or impoundment until the day final closure begins.

(q) *Milestone* means an enforceable date by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m^2–s flux standard.

3. Section 192.32(a) is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(6), and by adding new paragraphs (a)(3) and (a)(4), to read as follows:

§ 192.32 Standards.

(a) * * *

(3) (i) Uranium mill tailings piles or impoundments that are nonoperational and subject to a license by the Nuclear Regulatory Commission or an Agreement State shall limit releases of radon-222 by emplacing a permanent radon barrier. This permanent radon barrier shall be constructed as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the pile or impoundment ceases to be operational. Such control shall be carried out in accordance with a written tailings closure plan (radon) to be incorporated by the Nuclear Regulatory Commission or Agreement State into individual site licenses.

(ii) The Nuclear Regulatory Commission or Agreement State may approve a licensee's request to extend the time for performance of milestones if, after providing an opportunity for public participation, the Nuclear Regulatory Commission or Agreement State finds that compliance with the 20 pCi/m²−s flux standard has been demonstrated using a method approved by the NRC, in the manner required in 192.32(a)(4)(i). Only under these circumstances and during the period of the extension must compliance with the 20 pCi/m²−s flux standard be demonstrated each year.

(iii) The Nuclear Regulatory Commission or Agreement State may extend the final compliance date for emplacement of the permanent radon barrier, or relevant milestone, based upon cost if the new date is established after a finding by the Nuclear Regulatory Commission or Agreement State, after providing an opportunity for public participation, that the licensee is making good faith efforts to emplace a permanent radon barrier; the delay is consistent with the definition of "available technology" in § 192.31(m); and the delay will not result in radon releases that are determined to result in significant incremental risk to the public health.

(iv) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of the site to remain accessible during the closure process to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), or to accept materials similar to the physical, chemical and radiological characteristics of the in situ uranium mill tailings and associated wastes, from other sources. No such authorization may be used as a means for delaying or otherwise impeding emplacement of the permanent radon barrier over the remainder of the pile or impoundment in a manner that will achieve compliance with the 20 pCi/m²−s flux standard, averaged over the entire pile or impoundment.

(v) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of a pile or impoundment to remain accessible after emplacement of a permanent radon barrier to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), if compliance with the 20 pCi/m²−s flux standard of § 192.32(b)(1)(ii) is demonstrated by the licensee's monitoring conducted in a manner consistent with § 192.32(a)(4)(i). Such authorization may be provided only if the Nuclear Regulatory Commission or Agreement State makes a finding, constituting final agency action and after providing an opportunity for public participation, that the site will continue to achieve the 20 pCi/m2−s flux standard when averaged over the entire impoundment.

(4)(i) Upon emplacement of the permanent radon barrier pursuant to 40 CFR 192.32(a)(3), the licensee shall conduct appropriate monitoring and analysis of the radon-222 releases to demonstrate that the design of the permanent radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m²−s as required by 40 CFR 192.32(b)(1)(ii). This monitoring shall be conducted using the procedures described in 40 CFR part 61, Appendix B, Method 115, or any other measurement method proposed by a licensee that the Nuclear Regulatory Commission or Agreement State approves as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m²−s flux standard.

(ii) When phased emplacement of the permanent radon barrier is included in the applicable tailings closure plan (radon), then radon flux monitoring required under § 192.32(a)(4)(i) shall be conducted, however the licensee shall be allowed to conduct such monitoring for each portion of the pile or impoundment on which the radon barrier has been emplaced by conducting flux monitoring on the closed portion.

4. Section 192.32(b)(1), footnote number 1 is revised to read as follows:

§ 192.32 Standards.

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(b) * * *

(1) * * *

[1]The standard applies to design with a monitoring requirement as specified in § 192.32(a)(4).

Subpart E—[Amended]

5. Section 192.41 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 192.41 Provisions.

Except as otherwise noted in § 192.41(e), the provisions of subpart D of this part, including §§ 192.31, 192.32, and 192.33, shall apply to thorium byproduct material and:

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(e) The provisions of § 192.32(a) (3) and (4) do not apply to the management of thorium byproduct material.

[FR Doc. 93-27707 Filed 11-12-93; 8:45 am]
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