NATIONAL MINING ASSOCIATION
COMMENTS ON POTENTIAL NRC 10 CFR PART 40 RULEMAKING

PREPARED FOR THE 2019 NATIONAL MINING ASSOCIATION URANIUM RECOVERY CONFERENCE

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INTRODUCTION: NMA COMMENTS ON PART 40 RULEMAKING

• On January 31, 2019, the United States Nuclear Regulatory Commission (NRC) Staff Issued a Federal Register Notice Soliciting Comments on a Potential Rulemaking to Revise 10 CFR Part 40;

• Interested Stakeholders Invited to Offer Comments on:
  • Whether NRC Staff Should Engage in a Rulemaking;
  • What Revisions or Additions Should Be Made

• Comment Period Extended by Grant of NRC Staff to May 3, 2019
INTRODUCTION: NMA COMMENTS ON PART 40 RULEMAKING

• On May 3, 2019, the National Mining Association (NMA) Submitted Comments As Follows:

  • A Narrow-Scope Rulemaking Makes the Most Sense Due to the Effectiveness of NRC’s Uranium Recovery Regulatory Program;
  • Risk-Informed Regulation Should be Maintained;
  • Application to ISR Operations Should Be Emphasized With Other Additions;
  • Specific Regulatory Language Revisions and Additions Were Not Included But Will be Evaluated When and If NRC Decides to Pursue a Rulemaking
INTRODUCTION: NMA COMMENTS ON PART 40 RULEMAKING

In Order to Facilitate a Timely, Narrow-Scope Rulemaking, NMA Believes Specific Proposed Regulatory Language Revisions and Additions Could Be Offered to Help Guide a Rulemaking on a Number of Topics:

- Historical Overview;
- Part 40.4 Definition Revisions and Additions;
- Part 40.32(e) Construction Rule;
- Part 40.42 Timeliness in Decommissioning;
- Part 40.65 Radon Monitoring;
- Appendix A Revisions and Additions
Historical Rulemaking Efforts:

- Late 1990s and 2000s;
- U.S. EPA 40 CFR Part 192 Initiative;
- Risk-Informed Regulatory Approaches;
- Specific Rulemaking Initiatives
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

- NMA is in a Position to Offer Several Minor Changes and/or Additions to Current 10 CFR Part 40 Regulations and Appendix A Criteria Intended to:

  - Harmonize Regulations Originally Intended for Conventional and Heap Leach Milling Facilities with ISR Programs;
  - Codify Existing NRC Regulatory and Legal Determinations and Policies;
  - Maintain Risk-Informed Regulatory Practices
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Revisions or Additions to 10 CFR Part 40 Definitions:

• Over The Past Three (3) Decades Since These Definitions Were Originally Introduced, Several New Terms Have Been Adopted or Existing Terms Modified:

  • Clarity Requires That These Items Be Amended or Revised So That Licensing Actions May Be Done More Efficiently;
  • Examples Include the Definitions of “Alternate Feed,” “Equivalent Feed,” “Uranium Milling”
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Revisions to 10 CFR Part 40.32 Construction Rule:
  
  • The Prior Amendments to the “Construction Rule” Were Intended to Clarify The Types of Activities at Licensed Sites That Are Not Eligible for Commencement and/or Completion Prior to License Issuance;
  
  • Further Clarification with References to Specific Examples Should Be Considered:
    
    • Especially Critical for ISR Facilities As They Are Phased by Nature in Construction, Have Different Construction Plans and Critical Paths, and Have Different Compliance Criteria Such as Groundwater Standards
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Revisions to 10 CFR Part 40.42 Timeliness in Decommissioning Requirements:

  • Timeliness in Decommissioning Was Originally Intended to Promote Efficient Closure of Byproduct Material Facilities Within a Twenty-Four (24) Month Period;
  • In the 1980s, Prudence Dictated That Conventional and/or Heap Leach Byproduct Material Facilities (Containing Mill Tailings) Required More Than 24 Months to Close; As Such, a Specific Exemption for These Facilities Was Promulgated;
  • Recent Advent of ISR Wellfields Shows That the Same Concept Applies There;
  • Currently, ISR Wellfields Are Subject to “Alternate Schedules” for Restoration
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Repeal of 10 CFR Part 40.65 Radon Monitoring Requirements:

  • One of the Primary Missions of Efficient, Risk-Informed Regulatory Entities is To Eliminate Unnecessarily Duplicative Regulatory Requirements;
  • Part 40.65 Was in Place Prior to the Promulgation of the Current Dose Assessment Requirements in 10 CFR Part 20, Which All Byproduct Material Licensees Are Required to Follow;
  • No Need for Part 40.65 to Be in Place Because Part 20 Covers all Total Effective Dose Equivalent for Public and Occupational Purposes, Including That From Radon
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

- Revisions to 10 CFR Part 40, Appendix A Criteria:
  - After Its Promulgation, Appendix A Criteria Served as the Specific Regulatory Platform for Byproduct Material Facilities, More Specifically Conventional and Heap Leach Facilities;
  - ISR Operations Were Not Considered to be a Primary Form of Production as Discussed in the Original GEIS (NUREG-0706);
  - Rulemaking Conditions Did Not Allow For a Revisions to the Rules Since the Original Possibility of a Part 41 Rulemaking Was Discussed;
  - Harmonization of and Revisions to These Criteria Will Assist in Making NRC’s and Its Agreement State’s Regulatory Program More Transparent and Easier to Understand
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Introduction to Appendix A Criteria (Sometimes Referred to as the “Preamble”):

  • The Commission Should Attempt to Link These Criteria Directly to ISR to Ensure That Its Requirements Are Applied to the Maximum Extent Practicable;
  • Concerns Are Often Raised That the Commission Regulates ISR Facilities by License Condition and Not By Hard-and-Fast Regulation;
  • Consistent with the Successful Regulation of These Facilities by The Commission Under Its Current Program, NMA’s Comments Reflect a Desire to Codify Already-Existing Commission Legal Determinations and Policies Rather Than Changing Aspects of the Program
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• **Revisions or Additions to Introduction/Preamble Language:**

  • Expressly Link Applicability of Appendix A to ISR Facilities; Many Aspects of These Criteria Currently Are Applied to Such Facilities;

  • **Add Additional Definitions of ISR-Specific Terms to the Definitions Section of the Introduction:**

    • The Lack of These Definitions Has Previously Led to Confusion About the Applicability of Certain Criterion to ISR Facilities;
    • Additional Definitions Will Also Provide Technical Information As to How These Facilities Are Operated, Restored, and Finally Decommissioned
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Revisions to Appendix A, Criterion 5B(5) on Groundwater Quality Standards:
  
  • Criterion 5B(5) Details the Three Specific Groundwater Quality Standards for Site-specific Groundwater Conditions:
    
    • “Commission-Approved Background” (CAB) or an MCL, Whichever is Higher; OR
    • An Alternate Concentration Limit (ACL) Approved Under Criterion 5B(6) Evaluative Requirements on a Site-Specific, Constituent-Specific, Risk-Based Process
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Important Items to Note With Respect to Recommended Revisions to Criterion 5B(5):

  • Criterion 5B(5) Groundwater Quality Standards ARE NOT Creations of the Commission; But Rather, Have Been Taken From EPA’s Resource Conservation and Recovery Act (RCRA) Requirements;
  • Licensees at All Byproduct Material Facilities HAVE A LEGAL RIGHT to Apply for an ACL;
  • Criterion 5B(5) Standards Apply as a Matter of Law to Byproduct Material Facilities Through Regulation (Convetional & Heap Leach) and Regulatory Issue Summary (RIS) 2009-15 (ISRs);
  • Hard-and-Fast Regulatory Application of These Standards to ISRs Would Be Helpful
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

- Revisions to Appendix A, Criterion 5B(6) (Evaluative Criteria for ACLs):
  - While the Only Recommended Addition to Criterion 5B(5) Would Be An Express Link to Its Legal Applicability to ISRs, Criterion 5B(6) Criteria Should Be Updated:
    - Typical ISR Groundwater Restoration Requirements Through the ACL Process at NRC and the UIC Process at the “Primacy” State Level Involves “Class of Use;”
    - “Class of Use,” By Definition, Categorizes Groundwater Quality Based on an Acceptable Use Such as:
      - Agricultural;
      - Industrial;
      - Stock Watering;
    - **BY DEFINITION, IT DOES NOT INVOLVE A PUBLIC DRINKING WATER SOURCE AS EPA REGULATIONS FOR AQUIFER EXEMPTIONS STATES EXPLICITLY THAT THE AQUIFER, OR PORTION THEREOF, CANNOT NOW NOR EVER IN THE FUTURE SERVE AS A SOURCE OF PUBLIC DRINKING WATER**
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Criterion 5B(6) Requirements Already Provide the Groundwork for Incorporation of “Class of Use:”

  • Evaluative Criteria Already Show That the Commission Assesses “Current and Future Uses of Groundwater” When Evaluating an ACL;
  • ACLs Are, by Definition, As Low As Reasonably Achievable (ALARA) or An ACL Would Not Be Granted;
  • Addition of a Reference to “Class of Use” in Regulation Would Be Extremely Helpful to NRC Staff and Agreement State Evaluation of ACLs
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Revisions to Criterion 7 Regarding “Baseline” Groundwater Quality for ISRs:

• It Has Become Readily Apparent That There is Either Significant Confusion or a Lack of Proper Understanding of the Differences Between Criterion 5B(5) CAB and Criterion 7 “Baseline” Groundwater Quality:

• Interested Stakeholders Often Think CAB and “Baseline” Are the Same Thing; They Are Very Different;

• For ISRs, Based on Their Phased Nature and the Part 40.32(e) Construction Rule, The Difference Between These Two Terms Are Critical
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Critical Differences Between Criterion 7 “Baseline” and Criterion 5B(5) CAB:

  • **Criterion 7 “Baseline” is:**
    1. Defined in NUREG-1569 ISR Standard Review Plan (SRP) (Chapter 2 and Preamble);
    2. Based on Sufficient Data to Justify Issuance of an NRC License;
    3. Not Sufficient to Constitute Criterion 5B(5) CAB

  • **Criterion 5B(5) CAB is:**
    1. Defined in Appendix A as a Groundwater Quality Standard for Operations and Restoration (As Well As Chapter 5 of the ISR SRP);
    2. Requires Construction, Installation, and Proper Testing of a Complete ISR Wellfield, Including Monitor Well Network. Which is Prohibited by the Construction Rule Prior to License Issuance
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

- Revisions to Financial Assurance Criteria (9 & 10):
  - Suggested Revisions to These Criteria Are Rudimentary at Best and Are Meant to Codify Existing Policies and Update Financial Assessments:
  - Criterion 9: Update the $250,000 in 1978 Dollars Projection To Keep the Numbers More Up-to-Date;
  - Criterion 10: Amend Its Language to Codify the Commission’s 2000 Hydro Resources, Inc. (HRI) Decision Stating That No ISR Operating License Can Be Issued Without an NRC Staff-Approved Restoration Action Plan (RAP) in Place
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

• Benefits to Criterion 10 Addition of HRI Decision to Its Language:

  • Lays Appropriate Groundwork for Future NRC and Agreement State Guidance on RAPs;
  • NRC Has Several Existing, Approved RAPs from Current Licensees, For Example:
    • HRI;
    • Strata Energy, Inc.;
    • AUC, LLC (UEC)
  • Existing RAPs Are Extremely Detailed and Provide Site-Specific Decommissioning/Restoration Plans and Financial Assurance Cost Estimates;
  • Must Be Updated on an Annual Basis Per NRC Regulation
NMA SPECIFIC RULEMAKING RECOMMENDATIONS

Concluding Remarks:

- Revisions and Additions to 10 CFR Part 40 Regulations Would Be Intended to Clarify NRC’s Uranium Recovery Regulatory Program and Codify Existing Legal Determinations and Policies;
- Maintain the Success of Risk-Informed Regulation;
- Remove Unnecessarily Duplicative Regulations;
- Provide Framework for Future NRC and Agreement State Guidance