

## NRC FACES BRC CONSENSUS FAILURE

Regulators intend to begin drafting rules that apply the concept that regulation is unnecessary below certain levels of radioactivity.

**T**HE U.S. NUCLEAR REGULATORY Commission (NRC) in November aborted its plan to negotiate a consensus with groups affected by the policy proposed for regulating "below regulatory concern" (BRC) low-level radioactive waste. The decision came after a prominent environmental group, the Natural Resources Defense Council (NRDC), backed away from the consensus-building effort pending the passage of Congressional legislation designed to give state regulators the power to override the BRC policy.

With the failure of the BRC consensus process, NRC officials intend to proceed with drafting rules that apply the concept that below certain levels of radioactivity regulation is not needed. The first proposed rule will likely be one to establish allowable levels of residual contamination at the sites of decommissioned reactors and other nuclear facilities.

The BRC policy statement intended to define on a national scale levels of radiation in waste and recyclables that could be exempted from the usual regulatory controls without endangering the public. The policy would permit an estimated 30% of the low-level radioactive waste stream to be buried in conventional landfills rather than licensed radioactive waste sites. The NRC unleashed a torrent of angry criticism from environmental groups and state governments after announcing the policy in June 1990.

In the wake of the furor aroused by the announcement, the NRC attempted to preserve some form of national BRC policy by inviting environmental and public interest groups and state governors to join a phased consensus-building process that would begin with the formation of a core group. Representatives from medicine, industry, the Environ-

mental Protection Agency, citizen organizations, and state governors were to be included.

By rejecting the consensus plan, environmental groups missed a "novel opportunity" for participation in the regulatory process, says Francis X. Cameron, an NRC deputy office director who coordinated the BRC consensus process. "It's unfortunate that the environmental community found that they couldn't participate."

The environmental groups that united against the BRC policy say they have no reason to trust the NRC in negotiations, and believe that taking part in the consensus process would weaken their case for the anti-BRC legislation pending in the House and Senate.

"What the NRC is trying to do is stymie the legislation in Congress," says Bill Magavern, staff attorney for the U.S. Public Interest Research Group in Washington, D.C. A bill sponsored by Rep. George Miller of California, chairman of the Committee on Interior and Insular Affairs, would give states the right to regulate low-level radioactive waste that the NRC decides to deregulate under the BRC policy. An amendment to the bill gives the states authority to set required levels of decontamination at NRC regulated sites, and to regulate the distribution of consumer products and recyclables containing radioactivity. "Once that legislation is in place we'd be willing to sit down and work out technical details with the NRC," says Mr. Magavern.

The NRDC is the only environmental organization that agreed to preliminary meetings with regulators and had considered joining the BRC consensus-building core group. Before the consensus process got off the ground, however,

the NRDC declined to participate, bowing to the objections of organizations such as Mr. Magavern's, Public Citizen, Greenpeace, and the Nuclear Information and Resource Service.

"All of these groups have...expressed their strong opposition to our own participation in the consensus-building process," NRDC leaders told Commissioner Kenneth C. Rogers of the NRC in a November 12 letter. "We do not believe we can fairly represent the views of the environmental community under such circumstances," stated the letter signed by NRDC's Dan W. Reicher, senior attorney, and Thomas B. Cochran, senior scientist.

The NRC has maintained the option of carrying out rulings based on the BRC principle. Rather than revoking the BRC policy, the commission declared a moratorium on the policy in June 1991. The commission has since refrained from considering any petitions from industry for regulatory exemptions of types of radioactive waste.

In drafting new rules such as the establishment of allowable levels of residual radioactive waste at decommissioned industrial sites, NRC officials say the commission will go beyond the usual rule-making procedure by holding early meetings and workshops with public interest groups, societies, industry groups, and other government agencies before publishing a proposed rule.

"This open rule-making will give the public earlier, and perhaps more meaningful access to the process," says Mr. Cameron of the NRC. In view of the tactics of the groups aligned against the BRC policy, however, there will be no end soon to the challenges staged in courts and in Congress.

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