Dated: October 23, 1991.

Kristine Gebbie,

Secretary, Department of Health.

ATTACHMENT A

[Non-Operational Tailings Impoundments]

Facility	Target date [1]
ANC, Gas Hills, WY	1995
—1 impoundment operational for in-situ waste disposal	
—1 non-operational impoundment	
ARCO Coal, Bluewater, NM	1995
Atlas, Moab, UT	1996
Conoco, Conquista, TX	1996
Ford-Dawn Mining, Ford, WA	2010
—1 operational impoundment	
—3 non-operational impoundments	
Hecla Mining, Durita, CO	1997
Homestake, Milan, NM:	
(large impoundment)	1996
(small impoundment)	2001
Pathfinder-Lucky Mc, Gas Hills, WY	1996
Petrotomics, Shirley Basin, WY	1995
Quivira, Ambrosia Lake, NM	1997
—2 operational impoundments	
—1 non-operational impoundment	
Rio Algom, Lisbon, UT	1996
Sohio-L-Bar, Cebollata, NM	1992
UMETCO, Gas Hills, WY	1995
—1 operational impoundment	
—1 non-operational impoundment	
UMETCO, Maybell, CO	1997
UMETCO, Uravan, CO	[2] 2002
UNC, Church Rock, NM	1997
Union Pacific, Bear Creek, WY	1996
WNI, Sherwood, WA	1996
WNI, Split Rock, WY	1995

[1] For completing emplacement of final earthen cover to limit radon emissions to a flux of no more than 20 pCi/m²/s.

[2] CERCLA Consent Decree requires final cover over tailings by 1997 but allows small portion (roughly 1% of the impoundment) to remain open to receive residues from groundwater restoration activities.

[FR Doc. 91-30635 Filed 12-30-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 192

[FRL-4087-4]

Health and Environmental Standards for Uranium and Thorium Mill Tailings

AGENCY: Environmental Protection Agency.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: EPA is today announcing its intention to enter into a future rulemaking pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901–7942) to amend its general environmental regulations pertaining to uranium mill tailings disposal sites at 40 CFR part 192, subpart D (subpart D). The anticipated amendments will supplement subpart D by requiring enforceable closure deadlines and appropriate monitoring for uranium mill tailing disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or one of its Agreement States (affected Agreement States). EPA intends to issue a proposed rule by April 30, 1992 and will at that time further delineate the scope and rationale for the amendments to subpart D, as well as solicit additional comments. Published elsewhere in today's Federal Register are two related rulemakings: A Notice of a Final Rule which stays the effectiveness of subpart T as it applies to nonoperational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State pending completion of this rulemaking, or June 30, 1994, whichever first occurs, and a Notice of Proposed Rulemaking in which EPA is proposing a rule to rescind subpart T as it applies to NRC-licensees.

DATES: Comments concerning this ANPR must be received by EPA on or before February 24, 1992. Public hearings will be held on January 15, 1992 in Washington, DC, and in Santa Fe, New Mexico on January 21 and 22, 1992.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Air Docket No. A-91-67, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments and requests to participate in a hearing may be faxed to EPA at (703) 308-8763.

Public hearings will be held on January 15, 1992 at 11 Dupont Circle, 8th Floor, Washington, DC 20036, and on January 21 and 22 at the Inn at Loretto, 211 Old Santa Fe Trail, Santa Fe, New Mexico 87501. Comments concerning this ANPR must be received by EPA on or before February 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Air Standards and Economics Branch, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Description of Uranium Mill Tailings Piles

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore to remove the uranium. Tailings are stored in large surface impoundments, called piles, in amounts from less than 1 million tons to over 30 million tons, over an area that may be as large as hundreds of acres. The majority of the piles are located in the Western United States.

To deal specifically with the risks associated with these piles, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901–7942). In enacting UMTRCA, Congress found that uranium mill tailings" * * * may pose a potential and significant radiation health hazard to the public, * * * and * * * that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978.

The other program (title II) was for active sites: Those licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also requires that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or the licensing Agreement State, is responsible for assuring compliance with EPA standards at licensed uranium milling sites.

2. UMTRCA Rulemaking—EPA

UMTRCA required that EPA promulgate standards for title I sites within one year of enactment (1978) and for title II sites within 18 months of enactment. UMTRCA was amended in January 1983 (Pub. L. 97-415) to include a provision to strip EPA of standard setting authority if EPA failed to establish standards by September 30, 1983 for title II sites.

On April 22, 1980 EPA proposed cleanup standards for inactive uranium processing sites (to be codified at 40 CFR part 192, subpart A), which were made immediately effective as interim standards pending public review and promulgation of final standards (45 FR 27370). These standards were for the cleanup of open lands and buildings contaminated with residual radioactive materials from inactive uranium processing sites. On January 9, 1981 EPA proposed (40 CFR 192, subpart B) disposal standards for inactive uranium processing sites (46 FR 2556). On January 5, 1983 EPA promulgated final rules for the disposal and cleanup of the inactive uranium mill tailings sites under UMTRCA Title I (48 FR 605).

On April 29, 1983 EPA proposed general environmental standards for title II uranium and thorium mill tailings sites. 48 FR 19584. These rules were promulgated on September 30, 1983. 48 FR 45926 (codified at 40 CFR part 192, subparts D and E).

Both the UMTRCA title I and title II standards were challenged in the Tenth Circuit Court of Appeals by several parties (Case Nos. 83-1014, 83-1041, 83-1206, and 83-1300) (Case Nos. 83-2226, 83-2227, 83-2277, 83-2504, 83-2524, 84-1349, 84-1352, 84-1482, and 84-1909). On September 3, 1985, the court upheld all aspects of EPA's standards except the ground water provisions of the title I regulations at 40 CFR 192.20(a)(2)-(3). *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied* 426 U.S. 1158 (1986). On September 24, 1987, EPA proposed new regulations to replace those set aside (40 CFR 192, subpart C, 52 FR 36000). The final rulemaking action is currently under review by the Office of Management and Budget.

As of this date, only two sorts of radon emissions are not governed by EPA's general environmental standards under UMTRCA: (1) Radon emissions during uranium mill operations, and (2) radon emissions after operations but prior to completion of final earthen cover. However, these two areas are addressed by EPA's Clean Air Act rules, as discussed below.

3. UMTRCA Rulemaking--NRC

On August 24, 1979, NRC proposed rules under UMTRCA title II for criteria relating to uranium mill tailings and construction of major plants to 10 CFR 30, 40, 70, 150, and 170 (44 FR 50015). Also on August 24, 1979, NRC promulgated final regulations with request for public comment for uranium mill tailings licensing at 10 CFR 40, appendix A. 44 FR 50012. On October 3, 1980, NRC promulgated final rules to specify licensing requirements for uranium and thorium milling activities. 45 FR 65521 (codified at 10 CFR parts 30, 40, 70, and 150).

As required by Congress, on May 26, 1983, NRC proposed to suspend portions of their 10 CFR part 40, appendix A (appendix A) rules as they would be affected by EPA's recently proposed general UMTRCA standards for uranium mill tailings disposal. 48 FR 23649 (to be codified at 40 CFR part 192, subpart D, 48 CFR 35350). NRC placed in abeyance its 10 CFR part 40 regulations since they could have a significant cost impact on its licensees if NRC regulations were implemented before modification to conform to EPA standards, as required by the 1983 Amendments to UMTRCA (Pub. L. 97-415).

On November 26, 1984, NRC proposed rules at 10 CFR Part 40 that would conform NRC requirements to EPA standards for uranium mill tailings piles (49 FR 46418). Since these proposed rules excluded EPA ground water protection requirements, NRC also issued an ANPR on November 26, 1984 announcing their intention to incorporate ground water protection provisions and other requirements established by EPA (40 CFR part 192, subpart D) for similar wastes into NRC regulations (49 FR 46425). On October 1, 1985, NRC promulgated rules to conform their appendix A regulations to the provisions of EPA's general UMTRCA standards at 40 CFR part 192, as affecting matters other than ground water protection (50 FR 41852). On July 6, 1986, NRC proposed rules for ground water protection and other issues at uranium mill tailings sites (10 CFR part 40, 51 FR 2497). On November 13, 1987, NRC promulgated final rules for ground water protection at uranium mill tailings sites that conformed to provisions of EPA's standards for ground water protection at 40 CFR part 192, subparts D and E (52 FR 43553).

4. Clean Air Act Rulemaking

EPA listed radionuclides as a hazardous air pollutant under section 112 of the CAA on December 27, 1979 (44 FR 76738). Once listed, radionuclides became subject to the requirements of section 112(b)(1)(B) that EPA establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) "at a level which (in the judgment of the Administrator) provides an ample margin of safety to protect the public health from such hazardous air pollutant," or find that they are not hazardous and delist them.

EPA promulgated NESHAPs for emissions of radionuclides on October 31, 1989 for the following source categories: DOE Facilities, Licensees of the NRC and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Phosphogypsum Stacks, Underground Uranium Mines, and the operation and disposal of Uranium Mill Tailings Piles. These NESHAPs were published on December 15, 1989. (54 FR 51654).

The NESHAP for the disposal of uranium mill tailings is codified at 40 CFR part 61, subpart T, and it applies to both sites operated by DOE (UMTRCA title I) and sites licensed by NRC and Agreement States (UMTRCA title II). The standard has three primary requirements. First, it imposes an emission limit of 20 pCi/m^2-s to radon-222 emissions from a disposed pile. Second, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with this emission limit within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it is not physically possible for a mill owner or operator to complete disposal within that time, EPA shall, after consultation with the mill owner or operator, establish a compliance agreement pursuant to EPA's enforcement authority under CAA section 113 to assure that disposal will be completed as quickly as possible. Third, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit.

The two year disposal requirement and the radon monitoring requirement are unique to Subpart T as they are not a part of the requirements of the UMTRCA, AEA, or the Clean Water Act (CWA) standards (contained at 40 CFR parts 190, 192, and 440). The numerical radon emission limit, however, is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D).

B. Challenge to Subpart T

The overlap between EPA's Subpart D of the UMTRCA standard and its subpart T of the CAA NESHAP has generated concern that the regulations are unnecessarily burdensome and duplicative. As a result, several petitions for reconsideration have been filed, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, this ANPR is part of EPA's effort to address the issues they raise. Another part of the effort has been a number of meetings between EPA, NRC and affected Agreement States to discuss the dual regulatory programs.

The result of this intensive interagency consultation has been the execution of a Memorandum of Understanding (MOU) between EPA, NRC and the affected Agreement States. The MOU was published on October 25, 1991 at 56 FR 55434. The purpose of the MOU is to ensure that owners and operators of existing uranium mill tailings piles licensed by NRC or an affected Agreement State, or owners and operators of piles that will in the future become non-operational, effect final site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 pCi/m²-s—as expeditiously as practicable considering technological feasibility. This should occur at all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. This objective comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended.

EPA has tentatively concluded that with appropriate modifications to the general UMTRCA regulations to ensure specific, enforceable closure deadlines and monitoring requirements, and with the performance by NRC and the affected Agreement States of their other commitments contained in the MOU, the NRC's regulatory program for non-operational uranium mill tailings piles would protect public health with an ample margin of safety.

In a related action published elsewhere in today's FR, and also in accordance with the MOU and with this amendment to UMTRCA 40 CFR part 192, EPA is today also proposing to rescind its Subpart T CAA NESHAP as it applies to non-operational uranium mill tailings disposal sites that are licensed by NRC or an affected Agreement State. This proposal does not concern Subpart T sites that are under the control of the Department of Energy (DOE). These sites are proceeding to closure according to a separate schedule.

In another related action also published elsewhere in today's Federal Register, EPA is issuing a final stay of subpart T pending the rescission rulemaking. The stay was proposed on October 25, 1991 (56 FR 55432). All three actions—this ANPR to modify EPA's general subpart D UMTRCA regulations, the proposal to rescind the subpart T NESHAP, and the final stay of subpart T pending these rulemakings—are contemplated by the MOU recently entered into by EPA, NRC, and the affected Agreement States. The MOU, which is published at the end of the proposed rescission of subpart T (as it was for the proposed stay (see 56 FR at 55434)), delineates a course of action designed to achieve the result that the regulatory programs administered by NRC and its affected Agreement States will control radionuclide emissions to ambient air so that public health is protected with an ample margin of safety.

C. Future Rulemaking to Amend 40 CFR Part 192, Subpart D

As envisioned by the MOU and announced by this ANPR, the modifications EPA intends to make through rulemaking to its general UMTRCA regulations for non-operational uranium mill tailings disposal sites at 40 CFR Part 192, (subpart D) are meant to fill a specific regulatory gap that currently exists in subpart D. While subpart D, as currently written, does require eventual compliance with the 20 pCi/m²-s flux standard, it does not mandate that such occur by a specific date. Rather, as promulgated by EPA under subpart D and implemented by NRC (pursuant to its regulations at 10 CFR part 40, appendix A), a title II site licensed by NRC, or an affected Agreement State, could indefinitely continue to emit radon at levels which present risks higher than those allowed under the CAA for emission of hazardous air pollutants. It was this possibility which compelled EPA to promulgate subpart T under CAA section 112. If, however, this gap is filled by appropriate revisions to subpart D to mandate compliance with the 20 pCi/m²-s flux standard in a timely manner, and these changes are implemented by NRC and its regulatory program, EPA may then have the basis for rescinding subpart T pursuant to CAA section 112(d)(9), thereby avoiding unnecessarily duplicative and burdensome regulation.

With these purposes in mind, the specific modifications to subpart D currently being contemplated by EPA would lead to each non-operational uranium mill tailings disposal site receiving (either voluntarily or by administrative order) an amended license from NRC or an affected Agreement State that incorporates an enforceable reclamation plan designed to ensure compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility. EPA also intends to propose modifications to include appropriate monitoring provisions designed to verify that the flux standard is achieved and ensure that compliance will be ongoing.

Once these anticipated proposals are promulgated by EPA and implemented by NRC, subpart D should comprehensively address the hazards associated with the process of disposing of uranium mill tailings in a manner that adequately protects public health. EPA believes since it has the authority for the anticipated modifications to subpart D, these actions are consistent with what Congress envisioned when it enacted UMTRCA. EPA's current plan is to propose modifications of subpart D at 40 CFR 192.31(k), 192.31(l), and 192.32(a). These actions also fulfill the intent of Congress of section 112(d)(9) of the Clean Air Act, as amended in 1990, to avoid duplication of effort between government agencies.

D. Request for Comments

EPA is soliciting public comments on today's advanced notice of proposed rulemaking. Send comments to the Docket listed above on or before February 22, 1992. EPA is especially interested in receiving information related to current radon emissions and installed radon emission control methods currently in use, and what generally applicable timing requirements EPA should impose to achieve compliance as expeditiously as practicable considering technological feasibility.

List of Subjects in 40 CFR Part 192

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

Dated: December 19, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-30834 Filed 12-30-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 911221-1321]

RIN 0648-AE25

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 4 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would: (1)