

American Ecology

**DOCKET NUMBER
PROPOSED RULE 40
(67FR55175)**

7

STEPHEN A. ROMANO
President and
Chief Executive Officer

DOCKETED
USNRC

November 11, 2002

November 12, 2002 (3:39PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff

Re: Proposed Rule: 10 CFR Part 40 Transfers of Certain Source Materials by Specific Licensees (RIN 3150-AG64)

To the Secretary:

American Ecology Corporation disposes of radioactive materials through subsidiary companies US Ecology, Inc., Texas Ecologists, Inc. and US Ecology Idaho, Inc. This letter provides comments on the subject proposed rule on behalf of American Ecology and its subsidiaries.

I. General Comments:

1. American Ecology does not oppose rulemaking to specifically require NRC or Agreement State approval to transfer licensee source material to persons exempt from licensing requirements under Sec. 40.13(a) or equivalent Agreement State regulations.

US Ecology Idaho recently provided disposal facility performance assessments, permit requirements, site descriptions and other documents to an NRC licensee applying for NRC approval to transfer source material under 0.05 percent by weight to our Grand View, Idaho RCRA Subtitle C disposal facility. We believe the regulatory review process employed in this case by the NRC was efficiently conducted and appropriate in scope.

2. As an experienced operator of facilities licensed under the Atomic Energy Act (AEA) and separate facilities permitted under the Resource Conservation and Recovery Act (RCRA), American Ecology strongly supports policy statements and potential rulemaking actions by the Commission clarifying that specifically authorized RCRA Subtitle C disposal facilities are eligible for source material transfer approval.

Template = SECY-067

SECY-02

The NRC has testified to Congress that RCRA Subtitle C disposal facilities provide an adequate level of health and safety protection for certain radioactive materials. This position is scientifically valid based on engineering design requirements, waste form standards embodied in the RCRA Land Disposal Restrictions (LDRs), financial assurance requirements and other controls placed on the development, operation, closure and post-closure care of RCRA Subtitle C disposal facilities.

Moreover, there are compelling public policy reasons for the Commission to take this position. Nationally, there is an overcapacity of constructed Subtitle C disposal space at multiple sites. This overcapacity stands in marked contrast to the very limited number of commercial low-level radioactive waste (LLRW) disposal facilities licensed under the AEA, varying access restrictions on these sites, and materially higher disposal rates for LLRW facilities. Beyond conserving limited LLRW disposal capacity, use of Subtitle C disposal capacity can offer significant health and safety benefits to licensees delaying final closure and decommissioning of non-operating facilities due to funding limitations. In practical effect, higher disposal prices can delay decommissioning actions indefinitely.

3. American Ecology strongly recommends that the Commission take no general position on dilution. A general position or specific dilution restrictions are unnecessary given the NRC's existing case-specific transfer approval authority. Conversely, stated restrictions would reduce future NRC and Agreement State flexibility. In specific cases, controlled dilution may allow accelerated closure and decommissioning of non-operating facilities by providing access to economical disposal. This, in turn, may offer direct public health and safety benefits at specific licensed facilities.

Under the circumstances addressed by the proposed rulemaking, dilution cannot be used to avoid regulation. This is because the NRC and Agreement State programs must approve transfers of licensee source material. In the case of approved transfers to a Subtitle C disposal facility, material approved for transfer would be subject to full RCRA regulatory controls as well as applicable disposal facility permit requirements for acceptance of radioactive materials. NRC or the reviewing Agreement State program would presumably consider these regulatory controls and relevant performance assessment information prior to approving or disapproving a transfer. Whether or not licensee source material is diluted prior to transfer is irrelevant to protection of public health and safety at the receiving disposal facility. Given the overcapacity of well-regulated Subtitle C disposal space, we see no advantage to general restrictions.

4. American Ecology agrees that the proposed rule should not change current requirements for review and approval of on-site disposal by licensees.

5. American Ecology questions that the conservative dose assessments presented in NUREG-1717, "Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials" provide a sound basis for regulatory policy decisions. We recommend that the NRC reassess the reasonableness of the NUREG-1717 dose assessments in relation to more recent ICRP 68 dosimetry guidelines, available licensee data, and input received from the Part 40 Jurisdictional Working Group.

II. Specific Comment:

If adopted, the rule should explicitly allow approval by authorized Agreement States. NRC would evaluate implementation as part of its Agreement State program evaluation process. We specifically suggest amending Amend Sec. 40.51 (e) to read:

"A license shall obtain written approval from the NRC or Agreement State licensing agency before transferring any source material derived from its specifically licensed material to persons exempt under Sec. 40.13(a) or equivalent Agreement State regulations. A licensee seeking NRC or Agreement State approval to transfer such material must submit a dose assessment with information containing the estimated annual total effective dose equivalent to a member of the public that would result from the transfer, and the parameters and assumptions used in the assessment."

Thank you for this opportunity to comment.

Sincerely;



Stephen A. Romano
President and Chief Executive Officer

cc: Commissioner Meserve
Commissioner Merrifield
Commissioner Diaz
Commissioner McGaffigan
Commissioner Dicus