



Department of Energy Washington, DC

May 20, 1998

Robert Perciasepe
Assistant Administrator for Water
U.S. Environmental Protection Agency (EPA)
Washington, DC 20460

Dear Assistant Administrator Perciasepe:

The Department of Energy (DOE) would like to express concerns about your plans to issue final primary drinking water standards for radionuclides, as announced during a December 11-12, 1997, Radionuclides Stakeholders Meeting in Arlington, Virginia. Based on the presentations made at the meeting, DOE believes that its environmental restoration and radioactive waste management activities may be adversely, and unnecessarily, affected by EPA's final rule. EPA may be in a position to avoid these problems, and to maximize public health and environmental protection, if sufficient opportunity is provided for public comment on a re-proposed rule.

In July 1991, EPA proposed revisions to the existing primary drinking water standards for radionuclides in drinking water, including revisions to maximum contaminant levels (MCLs). In the years since the proposed rule was published, EPA has made numerous changes to its drinking water program, and the 1996 amendments to the Safe Drinking Water Act (SDWA) were enacted. EPA now plans to issue final revised primary drinking water standards for radionuclides by November 2000, under a schedule negotiated by parties to a lawsuit brought to enforce the SDWA.

Our foremost concern is that the limited regulatory analysis planned by EPA might not assure that public and environmental protection is maximized and that limited resources are directed toward the most significant potential risks. We are also concerned that EPA may promulgate a final rule that differs significantly from the requirements proposed in 1991, and from existing requirements, without the benefit of input that could be provided by DOE and other stakeholders.

DOE's concern about EPA's regulatory analysis stems from the intention of the Office of Water, confirmed at the stakeholder meeting, to assess only the potential benefits and costs of applying the final revised standards to tapwater supplied by public drinking water systems. This approach would not consider the EPA regulatory practice and policy of using drinking water MCLs as reference points for ground water protection decisions. However, because operators of drinking water systems usually need to remove a limited number of radionuclides to provide public protection, the primary application of the MCLs for many radio-nuclides will be to ground water rather than to drinking water.

The Department believes that several situations exist where application of EPA's regulatory practice and policy for ground water protection would either not provide a clear public and environmental benefit, or could even cause more harm than good. Based on our understanding of the rulemaking, current difficulties may even be exacerbated.

Furthermore, the planned rulemaking may significantly increase the already large costs projected for the Department's environmental restoration and radioactive waste management activities. Based on Department projections in "Accelerating Cleanup - Paths to Closure" (February 1998),

the Department estimates that its current identified environmental management projects will cost nearly \$150 billion to complete.

Therefore, we think the assessment of the benefits and costs that EPA is required to provide to the Office of Information and Regulatory Affairs under Executive Order 12866 must include a determination that a clear benefit in public or environmental protection would result that would be commensurate with the costs of their use as ground water protection criteria. Such an assessment is needed to assure that public and environmental benefits are maximized and that limited resources are directed toward the most significant potential risks. We would be happy to work with EPA on the design and conduct of such an expanded analysis for this economically significant rulemaking.

We also recommend that EPA give all stakeholders an opportunity to comment on its planned changes to the proposed drinking water standards and its interpretations of the 1996 amendments to the SDWA. Because EPA is contemplating standards that would differ markedly from those proposed in 1991, and from existing standards, a comment opportunity would avoid a possible claim by a regulated person that EPA has not fully complied with the notice-and-comment rulemaking requirements of the Administrative Procedures Act. Such an event could raise uncertainties that would impact DOE's ability to effectively plan and implement its environmental restoration and waste management programs.

We appreciate the information provided at the stakeholders meeting. However, in light of the potential effects of a final rule on DOE's environmental restoration and waste management activities, we request an opportunity to provide detailed comments to EPA on a re-proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter N. Brush", with a long horizontal flourish extending to the right.

Peter N. Brush
Acting Assistant Secretary
Environment, Safety and Health

A handwritten signature in black ink, appearing to read "James Owendoff", with a stylized, cursive script.

James Owendoff
Acting Assistant Secretary
Office of Environmental Management