

New York State Department of Environmental Conservation

Division of Solid and Hazardous Materials, Room 488

50 Wolf Road, Albany, New York 12233-7250

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AUG 07 2000

Mr. George B. Brooks, P.E.
Deputy District Engineer for Project Management
U.S. Army Engineering District, Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199

Post-It* Fax Note	7671	Date	8-9-00	# of pages	7
To	George Brooks	From	S. Hammond		
Co./Dept.		Co.	NYS DEC		
Phone #		Phone #			
Fax #	716 879-4195	Fax #			

Dear Mr. Brooks:

This is to inform the U.S. Army Corps of Engineers of a recent emergency rulemaking that may affect the Corps' operations under the Formerly Utilized Remedial Action Program (FUSRAP) in New York State. In addition, we are inviting the Corps to participate in an upcoming rulemaking that will make this regulatory change permanent.

Emergency Rule Effective July 31, 2000

On July 31, 2000, the Department filed with the New York State Department of State the enclosed *Notice of Emergency Adoption*. This emergency adoption has amended the Department's *Rules and Regulations for Prevention and Control of Environmental Pollution by Radioactive Materials*, 6 NYCRR Part 380, which controls the disposal of radioactive materials and radioactive wastes in this State. Under this amendment, Part 380 now applies to the disposal of radioactive tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, where such tailings or wastes are not regulated by the U.S. Nuclear Regulatory Commission or an Agreement State. Currently, this includes the radioactive material at all but one (Colonic) of the FUSRAP sites in New York State and their associated vicinity properties.

The effect of this amendment is that landfills in New York State are not authorized to accept for disposal any solid waste from FUSRAP sites if that solid waste contains radioactive uranium, thorium, and their decay products at concentrations greater than normal background concentrations. Under this amendment, those wastes are radioactive wastes and are not acceptable at Part 360 or Part 373 permitted facilities. This applies to wastes from sites outside of New York State as well as sites in the State.

Mr. George B. Brooks, P.E.

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This emergency rulemaking places these FUSRAP wastes in a regulatory situation similar to that which they were in prior to the October 1, 1997 transfer of the FUSRAP from the U.S. Department of Energy to the U.S. Army Corps of Engineers.

Upcoming Rulemaking Process

This emergency rulemaking will be effective for 90 days. In the near future, the Department will issue a Notice of Proposed Rulemaking, which will be the first step in adopting this regulatory change permanently. At that time, the amendment will be available for public review and comment. However, we would be interested in the Corps' comments at any time prior to the end of the comment period.

To that end, please call or send your comments to:

Barbara Youngberg
Bureau of Radiation & Hazardous Site Management
Division of Solid & Hazardous Materials
NYS Department of Environmental Conservation
50 Wolf Road, Room 402
Albany, New York 12233-7255
518-457-2225
byoungb@gw.dec.state.ny.us

We look forward to hearing from you on this important matter.

Sincerely,



Stephen Hammond, P.E.

Director

Division of Solid & Hazardous Materials

Enclosure

For Department of State use only.

Notice of Emergency Adoption

Department of Environmental Conservation
(SUBMITTING AGENCY)

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

1. **Action taken:** Amendment of 6 NYCRR Part 380 to regulate the disposal of the radioactive wastes generated by the extraction or concentration of uranium or thorium where such waste is not regulated by the U.S. Nuclear Regulatory Commission.

2. **Effective date of emergency rule:**

☒ Date of filing.

☐ Other date (specify): _____

3. **History of emergency actions:**

☒ This is the first time this emergency rule has been adopted.

☐ This is the first readoption of an emergency rule printed in the *Register* as a notice of emergency adoption and proposed rule making on _____, under I.D. No. _____

☐ This emergency rule was originally proposed for permanent adoption in the *Register* on _____, under I.D. No. _____

☐ This is the (second, third, etc.) _____ readoption of this emergency rule.

4. **Statutory authority under which the rule was adopted:** Environmental Conservation Law, Articles 1, 3, and 27

5. **This emergency rule is necessary for the preservation of:**

☒ public health

☒ public safety

☒ general welfare

6. **The specific reasons underlying the finding of necessity, above, are as follows:** Because the federal government no longer regulates radioactive wastes produced (prior to 1978) during the extraction or concentration of uranium and thorium from ores, the State needs to control their disposal to protect the environment and the public health and safety. These wastes will be radioactive for millions of years. The federal government is currently conducting a cleanup of a site in New York that is generating these wastes. At least one Part 360 landfill has contacted the Department inquiring as to whether it can accept this material. Part 360 landfills for municipal solid waste and construction and demolition debris are not designed to isolate radioactive material from the environment. However, current regulations do not prohibit the disposal of such wastes in these landfills. Without this amendment, Part 360 landfills could accept radioactive material in concentrations hundreds of times above normal background levels. Over time, the uncontrolled disposal of radioactive wastes can cause people to receive radiation doses exceeding radiation protection limits.

With respect to general welfare, the acceptance of these wastes at landfills would increase operational and closure costs. The landfill leachate must be monitored for these radioactive constituents, which would increase analysis costs. Such monitoring would be required beyond the current 30-year period. If the radioactive material

were detected in the leachate, leachate management and disposal would become more expensive and complicated. In addition, the landfill itself could become a radioactively contaminated site, requiring either additional closure measures and financial assurance, or removal of the radioactive waste.

7. *Subject of the rule:* This rule making amends the Department's *Rules and Regulations for Prevention and Control of Environmental Pollution by Radioactive Materials*, 6 NYCRR Part 380. The amendment adds to the list of radioactive material regulated under Part 380 those radioactive wastes produced during the extraction and concentration of uranium or thorium from ores, where such wastes are not regulated by the U.S. Nuclear Regulatory Commission (NRC).

8. *Purpose of the rule:* The purpose of the rule is to control the disposal of wastes contaminated with the radioactive wastes from the extraction of uranium and thorium from ores. The rule will require that these radioactive wastes be disposed of at facilities authorized to accept radioactive waste, and will effectively exclude them from landfills, unless a variance to Part 380 is requested and granted. Variances can be granted for slightly contaminated wastes, if the proposed disposal will have no significant adverse impact on the public health and safety or the environment.

9. *Terms of rule (SELECT ONE):*

- ☒ The full text of the rule is attached since it is under 2,000 words.
- ☐ A summary of the rule is attached since the full text of the rule is over 2,000 words.
- ☐ Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(a)(ii).

10. *Type of notice:*

- ☐ This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less.
- ☐ This notice is intended to serve only as a notice of emergency adoption; however, the agency intends to adopt the provisions of this emergency as a permanent rule, having previously published a notice of proposed rule making on (date) _____, I.D. No. _____.
- ☒ This notice is intended to serve only as a notice of emergency adoption; however, the agency intends to submit a notice of proposed rule making in the future.

11. *Emergency expiration date* (A first emergency rule is effective and enforceable for up to 90 days from the date of filing. Second and subsequent emergency rules are effective and enforceable for up to 60 days from their date of filing UNLESS the agency specifies an earlier date). This rule expires:

- ☒ 90 days after filing (specify): _____
- ☐ 60 days after filing (specify): _____
- ☐ Other (specify date): _____

➤ A notice of proposed rule making must be published to adopt this rule permanently and before a first emergency rule can be readopted.

12. *The text of the final rule and any required statements and analyses may be obtained from:*

Agency contact Barbara Youngberg

Office address Division of Solid & Hazardous Materials, 50 Wolf Road, Albany, New York 12233-7255

Telephone (518) 457-2225

E-mail bayoungh@gw.dec.state.ny.us

13. *Additional matter required by statute:*

- ☒ Check box if NOT applicable.

14. *Regulatory Impact Statement (RIS)*

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached RIS contains:

- ☐ the full text of the RIS.

- ☒ a summary of the RIS.
- ☐ a consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.
- B. An RIS is not attached, because this rule is:
- ☐ a technical amendment exempt from SAPA §202-a; attached is a statement of the reason(s) for claiming this exemption.
- ☐ subject to a consolidated RIS printed in the *Register* under I.D. No.: _____; issue date: _____.
- ☐ exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- C. An RIS is not attached, but will be published in the *Register* within 30 days of the rule's effective date.

15. Regulatory Flexibility Analysis (RFA) for small businesses and local governments
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached RFA contains:
- ☒ the full text of the RFA.
- ☐ a summary of the RFA.
- ☐ a consolidated RFA, because this rule is one of a series of closely related rules.
- B. An RFA is not attached, because this rule:
- ☐ will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments (*attach a statement in scanner format that explains the agency's finding and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements*).
- ☐ is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____; issue date: _____.
- ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- C. ☐ An RFA is not attached, but will be published in the *Register* within 30 days of the rule's effective date.

16. Rural Area Flexibility Analysis (RAFA)
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached RAFA contains:
- ☒ the full text of the RAFA.
- ☐ a summary of the RAFA.
- ☐ a consolidated RAFA, because this rule is one of a series of closely related rules.
- B. An RAFA is not attached, because this rule:
- ☐ will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas (*attach a statement in scanner format that explains the agency's finding and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements*).
- ☐ is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____; issue date: _____.
- ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- C. ☐ An RAFA is not attached, but will be published in the *Register* within 30 days of the rule's effective date.

17. Job Impact Statement (JIS)
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached JIS contains:
- ☐ the full text of the JIS.

- ☐ a summary of the JIS.
- ☐ a consolidated JIS, because this rule is one of a series of closely related rules.

B. A JIS is not attached, because this rule:

- ☒ will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) (attach a statement in scanner format that explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination).

Continued . . .

17. B. A JIS is not attached, because this rule . . .

- ☐ is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____; issue date: _____.
- ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- ☐ is exempt, because it is submitted by the State Comptroller or Attorney General.
- ☐ has a JIS/Request for Assistance attached to this notice.

C. ☐ A JIS is not attached, but will be published in the *Register* within 30 days of the rule's effective date.

18. **Assessment of Public Comment**—required for second or subsequent readoptions (check applicable box).

- ☐ An assessment of public comment is attached (less than 2,000 words).
- ☐ An assessment of public comment is not attached because the rule is within the definition of SAPA §102 (2)(a)(ii) [Rate Making].
- ☐ The agency received no public comment since publication of the last assessment of public comment.
- ☐ The agency received no public comment.

19. **Referenced material (check one box):**

- ☒ No information is being incorporated by reference in this rule.
- ☐ This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

20. **For readoptions of emergency rule makings** indicate if any changes were made to the text of this rule since the last filed emergency rule making.

- ☐ No revisions to text.
- ☐ Revisions were made in the following Parts, sections, subdivisions or paragraphs:

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Deborah I. Aldrich

Signature

Deborah I. Aldrich

Address Division of Solid & Hazardous Materials 50 Wolf Road Albany New York 12233-7250

Date July 31, 2000

Telephone (518) 457-0532

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in scannable format as described in the Department of State's "NYS Register Procedures Manual."
2. Submit the **original notice and scanner copy** collated as (1) form; (2) text or summary of rule; and, if any, (3) regulatory impact statement, (4) regulatory flexibility analysis for small businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement, (7) assessment of public comment. Submit the originals, as collated, and **ONE copy of that collated set**. When filing any type of agency adoption, also submit an original certification stapled to rule text — and **TWO copies of that set**.
3. **Mail or hand deliver notice to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001.